GUIDE
TO
THE LAW
AND
LEGAL
LITERATURE
OF
FRANCE

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GUIDE

TO THE

LAW AND LEGAL LITERATURE

OF

FRANCE

PREPARED UNDER THE DIRECTION OF

EDWIN M. BORCHARD

Professor of Law, Yale University

Formerly Law Librarian (1911–1916)

BY

GEORGE WILFRED STUMBERG

Professor of Law, University of Texas

Sterling Fellow, Yale University (1927–1928)

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PREFACE

The *Guide to the law and legal literature of France* is the fifth in the series of guides to foreign law published by the Library of Congress. It was preceded by the *Bibliography of international law and continental law* (1913), the *Guide to the law and legal literature of Germany* (1912), the *Guide to the law and legal literature of Spain* (1915), and the *Guide to the law and legal literature of Argentina, Brazil, and Chile* (1917).

There are in the main three groups of investigators whose need for a knowledge of foreign law the Library of Congress has sought to meet: First, the lawyer, the judge, and the citizen, who require practical information of the legal institutions of foreign countries in the solution of practical problems affecting the individual; second, the legislator and the student of comparative government, who desire familiarity with the methods by which foreign governments have solved the economic and social problems which face an industrial age; and third, the student of jurisprudence, who is interested in legal method, doctrine, and philosophy for purposes of scientific investigation.

For all these purposes French law and legal institutions afford a fruitful source of information. The important commercial relations of foreign countries with France and the great number of foreigners who live in and visit France have created an ever-widening practical interest in French law. In the solution of social questions, notably in the legal control of the relations between the group and the individual, French administrative law has created legal institutions of the greatest importance to all investigators. For example, in the field of governmental responsibility for the torts of state officers, French science and practice stand preeminent among the nations. Finally, as a state with centuries of cultural background, France has been the center of an intellectual life which is as noteworthy in the

field of jurisprudence as it is in many other departments of the humanities. As a leader in the modern movement for codification, France has inspired many of the codes of other Latin and of Latin-American countries; and, though the French codes are no longer the best, French courts have demonstrated that codification does not necessarily imply rigidity and inflexibility. The jurists of France, by their productive scholarship, will long afford materials for the foreign student of legal method and philosophy. Included among these jurists are names immortal in the history of law.

The general plan of the guides to foreign law has been to combine with an introduction to the legal system as a whole, emphasizing its distinctive contributions to legal thought and development, certain practical information concerning positive law and legal institutions accompanied by a critical comment upon the literature in which those institutions are described and discussed.

For the preparation of the present guide, the Yale Law School granted to Prof. G. W. Stumberg, of the University of Texas, who in 1924 obtained his doctorate in law from the Yale Law School, a Sterling fellowship to enable him to spend a year in New Haven, Washington, and Paris in the pursuit of the studies necessary to prepare the guide. The assistance of eminent scholars of France was invoked in the comparative estimates placed upon the value of different works in a given field. Professor Stumberg has, it is believed, accomplished his task with marked ability and discrimination, and the volume is offered to the public in the hope that it may serve to acquaint the investigator with the outlines of French law and the resources of French legal scholarship.

EDWIN M. BORCHARD.

HERBERT PUTNAM,
Librarian of Congress,
Washington, D. C., March 1, 1930.

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GUIDE TO THE LAW AND LEGAL LITERATURE OF FRANCE

INTRODUCTION

The legal profession in the United States, along with that in England, has been but little inclined to look beyond the common law for aid in the solution of legal problems. With a few notable exceptions such as social legislation, where our English brethren have been more willing to accept modern movements, particularly those of German origin, there has been since the early part of the last century no marked evidence of any tendency in this country or England to draw from the vast reservoir of continental legal thought and learning, whether in the field of general jurisprudence, legislation, procedure, or judicial decision. By way of contrast American judges in the earlier period of our legal development freely made use of the then current continental literature. Dean Pound, in an article in the Illinois Law Review, *The influence of French law in America* (v. 3, p. 354), tells us that one who reads the older American reports, particularly those of the state of New York, can not fail to notice the unusual number of references which they contain to the writers and authorities of the civil law. This early civil law influence, chiefly that of France, was due to a number of causes. Among others could be named hostility toward England and the popular favor that the French revolutionary movement received in this country. Probably a better reason is that judges and jurists dealing with a system of law undergoing a process of creation and formation naturally turned to the well-ordered outstanding treatises of the time. Inasmuch as legal thinking in Germany did not reach its high development until a much later period and Dutch legal literature had already passed its highest point, it was only natural that French works, such as those of Pothier and Domat, should be the ones to which judges and writers, such as Story and Kent, should turn.

Evidence of French influence on American law in the early stage of its evolution is also to be found in the Livingstone Codes in Louisiana where the Civil code remains to this day the only example of wholesale incorporation of a non-English system of law into the legal system of an American commonwealth. Perhaps one might attribute to the codification in France in the early nineteenth century some influence on the American movement for codification resulting in the draft codes of David Dudley Field.

American law has long since passed through the formative stage. The codification movement has largely spent its force, leaving in its train codes of pleading and in a few common-law states civil and penal codes. But law is a progressive social science which, if it is to develop properly, should take into consideration the best available thought. Nor is it wholly a national product. Its proper development makes it desirable to have an acquaintance with foreign legal systems. As early as 1872, Sheldon Amos in his *Science of jurisprudence* said that "the study of systems of law prevailing in a variety of countries is, indeed, the most fruitful of all experiences to the intelligent jurist" (p. 501). He also said that the prospects of the science of jurisprudence will depend largely upon familiarity with the vast and invaluable juridical literature of Germany and France.

Some of the literature of these countries, as well as of others, has been made available in English through the disinterested efforts of various associations. Notable examples are the *Modern criminal science series*,[1] *Continental legal*

[1] The Modern criminal science series. Published under the auspices of the American institute of criminal law and criminology. Boston, Little, Brown, and company, 1911–17. 9 v. The series comprises:

1. Modern theories of criminality. By C. Bernaldo de Quirós. Tr. from the 2d Spanish ed. by Alfonso de Salvio. 1911. 249 p.
2. Criminal psychology. By Hans Gross. Tr. from the 4th German ed. by Horace M. Kallen. 1911. 514 p.
3. Crime, its causes and remedies. By Cesare Lombroso. Tr. from the French and German editions by Henry P. Horton. 1911. 471 p.
4. The individualization of punishment. By Raymond Saleilles. Tr. from the 2d French ed. by Rachel Szold Jastrow. 1913. 322 p.

history series,[2] and *Modern legal philosophy series*.[3] The first guide in the present series was that to the law and

5. Penal philosophy. By Gabriel Tarde. Tr. from the 4th French ed. by Rapelje Howell. 1912. 581 p.

6. Crime and its repression. By Gustav Aschaffenburg. Tr. from the 2d German ed. by Adalbert Albrecht. 1913. 331 p.

7. Criminology. By Raffaele Garofalo. Tr. from the 1st Italian and the 5th French editions by Robert W. Millar. 1914. 478 p.

8. Criminality and economic conditions. By W. A. Bonger. Tr. from the French by Henry P. Horton. 1916. 706 p.

9. Criminal sociology. By Enrico Ferri. Tr. from the 4th Italian and the 2d French editions by Joseph I. Kelly and John Lisle. Edited by William W. Smithers. 1917. 577 p.

[2] The Continental legal history series, published under the auspices of the Association of American law schools. Boston, Little, Brown, and company, 1912–27. 10 v. The series comprises:

I. A general survey of events, sources, persons and movements in continental legal history. By various European authors. 1912. 754 p.

II. Great jurists of the world, edited by Sir John Macdonell and Edward Manson. 1914. 607 p.

III. A history of French private law. By Jean Brissaud. Tr. from the 2d French ed. by Rapelje Howell. 1912. 922 p.

IV. A history of Germanic private law. By Rudolf Huebner. Tr. by Francis S. Philbrick. 1918. 785 p.

V. A history of continental criminal procedure, with special reference to France. By Adhémar Esmein. Tr. by John Simpson, 1913. 640 p.

VI. A history of continental criminal law. By Carl Ludwig von Bar and others. Tr. by Thomas S. Bell and others. 1916. 561 p.

VII. A history of continental civil procedure. By Arthur Engelmann and others. Tr. and edited by Robert W. Millar. 1927. 948 p.

VIII. A history of Italian law. By Carlo Calisse. Tr. by Layton B. Register. 1928. 827 p.

IX. A history of French public law. By Jean Brissaud. Tr. by James W. Garner. 1915. 581 p.

X. The progress of continental law in the nineteenth century. By A. Alvarez, L. Duguit, J. Charmont, and others. Tr. by L. B. Register and E. Bruncken. 1918. 558 p.

[3] Modern legal philosophy series. Edited by a Committee of the Association of American Law Schools. Boston, The Boston book company; New York, Macmillan, 1911–25. 13 v. (Vol. 6 not yet issued.) The series to date comprises:

Introduction to the science of law; systematic survey of the law and principles of legal study. By Karl Gareis. Tr. from the 3d. rev. ed. of the German by Albert Kocourek. 1911. 375 p.

legal literature of Germany, published by Professor Borchard in 1912. Later guides were devoted to the law and legal literature of Spain and of Argentina, Brazil, and Chile.

There are a number of reasons why American lawyers and legislators should be particularly interested in French law and its literature. One would naturally expect a people who, like the French, have long occupied a foremost place in the world's culture, to supply much that is well worth while in every department of life. Further, to quote from Arthur W. Spencer's editorial preface to *Modern French legal philosophy* (p. xxix) "there is a marked propinquity of the institutions of the two countries," and examination of the treatment of the problems of law and state by French writers affords "the opportunity to become better acquainted with views we are likely to find acceptable."

The world's legal philosophies. By Fritz Berolzheimer. Tr. from the German by Rachel Szold Jastrow. 1912. 490 p.

Comparative legal philosophy applied to legal institutions. By Luigi Miraglia. Tr. from the Italian by John Lisle. 1912. 793 p.

General theory of law. By N. M. Korkunov. Tr. from Russian and French by W. G. Hastings. 1909. 524 p. 2d ed. New York, The Macmillan company, 1922. 524 p.

Law as a means to an end. By Rudolf von Ihering. Tr. from the German by Isaac Husik. 1913. 483 p.

Modern French legal philosophy. By A. Fouillée, J. Charmont, L. Duguit, and R. Demogue. Tr. by Mrs. Franklin W. Scott and Joseph P. Chamberlain. 1916. 578 p.

The theory of justice. By Rudolf Stammler. Tr. by Isaac Husik. 1925. 591 p.

Science of legal method. By various authors. Tr. by Ernest Bruncken and Layton B. Register. 1917. 593 p.

The formal bases of law. By Giorgio del Vecchio. Tr. by John Lisle. 1914. 412 p.

Philosophy of law. By Joseph Kohler. Tr. from the German by Adalbert Albrecht. 1914. 390 p.

Philosophy in the development of law. By Pierre de Tourtoulon. Tr. by Martha McC. Read. 1922. 653 p.

Rational basis of legal institutions. By various authors. Edited by John H. Wigmore and Albert Kocourek. Macmillan, New York. 1923, 603 p.

It is often said that the French codes, particularly the Civil code, reflecting the political theories of the Revolution, were impregnated with the spirit of individualism. Liberty of contract and individual freedom of action are not solely American conceptions. Indeed, in France as in this country they were concepts which played an important part in the development of the law. While not embodied in formal constitutional provisions, expressly or by implication, they were long assumed to be the guiding force of legislation and judicial interpretation. Within recent years they have become the battle ground of legislation and juridical opinion, with a resulting reexamination of old standards or concepts, and a revival of philosophical thinking.

One is apt to get the impression that codification arrests legal development. This was perhaps true during the period immediately following the promulgation of the codes, when legal thought was preoccupied with commentary and interpretation. But, as a matter of fact, the French codes, particularly the Civil code, in stating the law in the form of general principles, left a place for future evolution with the aid of courts and writers. There is here room for thought by American jurists who are attempting to restate our common law. The experience in France—undoubtedly not originally intended—with a pliable and adaptable code, is somewhat comparable with American experience in constitutional interpretation. Recent literature—such as that from the pen of Professor Gény—pertaining to methods of interpretation, is well worth consultation.

French contributions in the field of public law are particularly noteworthy. No other country has progressed so far in the development of administrative law. The modern French theory of the legal responsibility of the State for the torts of its officers is one which could be emulated with profit in other countries. Likewise, at a time when administration of criminal justice is receiving serious thought in America, efforts to meet the problems of crime should be of particular interest. Here French thought has been strikingly fertile. The theories of the classical school (to

which the legislation of the United States still adheres) and the biological and sociological theories of Lombroso and Ferri have been subjected to searching criticism from which a workable compromise between the classical and modern social concepts of the functions of criminal law has been reached. Then, too, much of French thought in the field of criminology has found its way into legislation either in the form of revision of the Penal code or additions to it.

Until recently, while in advance of this country, social legislation in France went through much the same process as in the United States. The arguments used in the early opposition to social and industrial legislation sound familiar to American ears. Here individualism and collectivism have passed through a struggle which has now culminated in the enactment of social legislation which is probably comparable in merit with the earlier legislation of Germany.

The vast volume of excellent literature produced in Germany and culminating in the German codes has drawn attention from the less spectacular but no less valuable literature produced in France since the promulgation of the Napoleonic codes. For the practitioner coming in contact with legal problems arising out of our constantly growing international commercial relations and the large number of nationals resident abroad a working knowledge of this literature is of importance, not merely because of the position of France in these respects, but also because of the fact that French law and its literature occupy such an important place in the legal systems and legal literature of all civil law countries. Time will not be taken to discuss in detail the influence, direct and indirect, of the French codes on the law of other countries. Interesting short discussions may be found in Doctor Alvarez's *Une nouvelle conception des études juridiques*,[4] parts of which appear in volume 11 of the *Continental legal history series*, and in Professor Planiol's *Traité élémentaire*.[5] A translation of this latter

[4] Alvarez, A. Une nouvelle conception des études juridiques et de la codification du droit civil. Paris, Pichon et Durand-Auzias, 1904. 234 p.

[5] Planiol, M. F., et G. Ripert. Traité élémentaire de droit civil. 10. éd. Paris, Librairie générale de droit et de jurisprudence, 1926–27. 3 v. (11. éd., v. 1– 1928– .)

discussion also appears in the first volume of the *Continental legal history series* (p. 302). The second volume of the *Livre du centenaire*,[6] published in 1904 on the occasion of the hundredth anniversary of the Civil code, contains a valuable collection of articles by legal scholars of a number of civil law countries.

One could hardly presume to pass judgment unaided on the literature of a foreign system of law. Necessarily, recourse has been had to the opinions of French jurists. The writer wishes to express his appreciation of the aid received from the members of the Paris law faculty without whose help it would have been impossible to gather the material which forms the subject matter of this volume. Appreciation is also due Yale University, Professor Borchard, and the staff of the Law Library of Congress, particularly Miss Olive M. Jack, Chief Assistant to the Law Librarian, Mr. John T. Vance.

BIBLIOGRAPHY

Until the recent publication of Grandin's *Bibliographie des sciences juridiques*[7] there was no comprehensive modern bibliography of French legal literature. Grandin's bibliography, however, is undoubtedly one of the most useful pieces of work of its kind. Covering the period from 1800 to 1926 it gives an exposition of French legal publications as well as of those published in the French language in other countries, thus constituting in addition a bibliography of a large part of the legal literature of Belgium and Switzerland. The plan followed is that of division according to general subject matter, with Roman law, legal history, civil law, commercial law, etc., forming distinct headings. The material under each heading is classified alphabetically. It is worthy of remark that the material covered includes, in addition to strictly legal subjects, political economy and sociology. In his preface M. Grandin states that it is the intention of the publishers to keep the

[6] Le Code civil. Livre du centenaire. Paris, Rousseau, 1904. 2 v.

[7] Grandin, A. Bibliographie générale des sciences juridiques, politiques, économiques et sociales. Paris, Recueil Sirey, 1926. 3 v. 1er Supplément, 1926 et 1927. Paris, 1928. 234 p. 2e Supplément, 1928. Paris, 1929. 167 p. 3e Supplément, 1929. Paris, 1930. 186 p.

work up to date through annual supplements. Three such have been published. Attention should also be called to the fact that the use of the bibliography is facilitated through the inclusion of an exhaustive subject and author index.

French bibliographic material then in existence was described in detail in 1913 by Professor Borchard, at that time Law Librarian of the Library of Congress, in his useful *Bibliography of international law and continental law*[8] (pp. 55–62). Much of the material discussed by Mr. Borchard has been superseded by Grandin's work, but there are several important bibliographic sources which still merit special consideration. Grandin's publication does not profess to include legal literature or historical sources prior to 1800, with the result that recourse must be had to other publications for earlier material. A useful list of French legal bibliographies is to be found in Dr. Fuchs' *Juristische bücherkunde*, items 1327–1386.[8a]

The best bibliography of early French legal literature is that contained in the second volume of Dupin's fifth edition of *Profession d'avocat*.[9] Originally the work of Camus, it was first published in 1772 and went through five editions, the fourth and fifth having been edited and revised by Dupin, a leading lawyer of his time. The bibliography is particularly valuable for its critical discussions. The last 50 pages are made up of historical and critical notes on a number of notable French books which are remarkable for their permanence in authority and for their originality. The literature dealing with the history of French law and its sources is also discussed in a work by Gavet, published in 1899.[10] Gavet's work, however, is difficult to read, and

[8] Borchard, E. The bibliography of international law and continental law. Washington, Govt. print. off., 1913. 93 p.

[8a] Fuchs, Wilhelm. Juristiche bücherkunde. 3. aufl. Linz, Franz Winkler, 1928. vii, 245 p.

[9] Camus. Profession d'avocat. 5. éd. Paris, Warée, 1832. 2 v. (4. and 5. éds. revised by Dupin.)

[10] Gavet, G. Sources de l'histoire des institutions et du droit français; manuel de bibliographie historique. Paris, Larose, 1899. 783 p.

its original reputation may have been dimmed by latter-day investigations by French scholars. The source material prior to the official compilation of customary law in the fifteenth century was dealt with by Koenigswarter[11] in 1853. Two useful works containing historical material are Warnkoenig's *Französische staats-und rechts-geschichte*,[12] and Brissaud's *History of French private law*.[13] The histories of French law by Glasson[14] and Viollet[15] are likewise useful as bibliographic sources of historical material, but the latest as well as most accurate discussion of historical sources is that contained in Professor Chénon's[16] recent history of French law, in which the learned author devotes a considerable part of the treatment of each period of legal history to the source material.

Unfortunately a work as large as that of Grandin can not pretend to be descriptive or critical. In his *Bibliographie raisonnée du droit civil*,[17] published in 1879, Dramard listed French books and articles relative to the Civil code under their appropriate headings, giving descriptive and, occasionally, critical notes. While now somewhat old, the *Bibliographie raisonnée* is still well worth consulting.

A number of publications devoted to French law give useful bibliographic notes. The different encyclopedias which will be discussed in a later chapter give a bibliography for every important subject. Particularly extensive bibliog-

[11] Koenigswarter, L. J. Sources et monuments du droit français antérieurs au xv^e^siècle, ou Bibliothèque de l'histoire du droit civil français depuis la première origine jusqu'à la rédaction officielle des coutumes. Paris, Durand, 1853. 132 p.

[12] Warnkoenig, L. A., und Stein, L. Französische staats-und rechtsgeschichte. 2. aufl. Bâle, 1875. 3 v.

[13] Brissaud, J. Manuel d'histoire du droit français. Paris, Fontemoing, 1898–1904. 1,892 p.

[14] Glasson, E. Histoire du droit et des institutions de la France. Paris, Pichon, 1887–1903. 8 v.

[15] Viollet, P. Droit privé et sources. Histoire du droit civil français. 3. éd. Paris, Larose et Tenin, 1905. 1,012 p.

[16] Chénon, E. Histoire générale du droit français public et privé, des origines à 1815. Paris, Recueil Sirey, 1926–29. 2 v.

[17] Dramard, E. Bibliographie raisonnée du droit civil. . . . Paris, Firmin-Didot et cie, 1879. 371 p.

raphies accompany the essays and monographs in the *Répertoire général alphabétique.*[18] A number of recent publications dealing with some particular branch of the law contain bibliographic notes. In the field of civil law, the elementary work [19] of Professors Planiol and Ripert has copious references to other treatises as well as to monographs and theses. These distinguished writers also give an excellent critical discussion of the leading treatises on civil law. The various treatises which make up the *Collection Thaller*, on commercial law,[20] contain bibliographic notes. In private international law, penal law and Roman law the treatises of Professors Weiss [21] and Pillet,[22] that of Professor Garraud [23] and the manual of Professor Girard,[24] respectively, give important bibliographic references. In connection with Roman law, mention should also be made of an important recent bibliography, *Bibliographie des travaux de droit romain en langue française*, prepared by Professor Collinet of Paris and published by Sirey.

Periodical sources of French legal bibliography are not numerous. The *Librairie Dalloz* publishes a bibliography as a supplement to its court reports, and valuable book reviews and bibliographic lists are published in a number of important periodicals, such as the *Nouvelle revue historique*,

[18] Répertoire général alphabétique du droit français, pub. par A. Carpentier et G. Frèrejouan du Saint. Paris, Librairie de la Société du Recueil général des lois et des arrêts, 1886–1906. 37 v. Supplement. 1911–28. 7 v.

[19] Planiol, M., et G. Ripert. Traité élémentaire de droit civil. 10. éd. Paris, Librairie générale de droit et de jurisprudence. 1926–27. 3 v. (11. éd., v. 1– 1928– .)

[20] Thaller, E. Traité général théorique et pratique de droit commercial. Paris, Rousseau, 1907–26. The collection, incomplete, consists of nine volumes covering partnerships, transportation, maritime law, and bankruptcy. *See* Commercial law (p. 104, note no. 4).

[21] Weiss, A. Traité théorique et pratique de droit international privé. 2. éd. Paris, Larose et Tein, 1907–13. 6 v.

[22] Pillet, A. Traité pratique de droit international privé. Paris, Recueil Sirey; Grenoble, Allier, 1923–24. 2v.

[23] Garraud, R. Traité théorique et pratique du droit pénal français. 3. éd. Paris, Larose et Tenin, 1913–24. 5 v.

[24] Girard, P. Manuel élémentaire de droit romain. 7. éd. Paris, Rousseau, 1924. 1,138 p.

Revue trimestrielle de droit civil, *Revue pénitentiaire*, and *Revue du droit public*. It might be stated in passing that the book reviews in the *Nouvelle revue* and the *Revue trimestrielle* have the reputation of being particularly good.

Several of the more important legal publishers publish useful bibliographic catalogues of modern and current literature. The *Bibliographie pratique* of the *Recueil Sirey* and the *Bibliographie générale et complète* of Godde, while not as valuable as the bibliography by Grandin, may be consulted with profit. The annual and monthly catalogues of the *Librairie Arthur Rousseau* are also well worth consulting.

Before passing on to the general bibliographies of French literature, attention should be called to two student guides which contain useful information as to the more important French legal works. Professor Capitant's little book, *Comment il faut faire sa thèse*,[25] in addition to giving information as to the steps to be taken by a candidate for the doctor's degree and the best method for preparing a thesis, also contains a chapter devoted to bibliography, in which the more important general publications are discussed. A former librarian of the Paris Law School, Gautier, prepared a *Guide*[26] to the library in 1919. While the information given is somewhat meager, it contains a valuable general description of the material in the library as well as important information as to its use.

In addition to the bibliographic material devoted particularly to legal literature, there are several publications covering the entire field of French literature which may be of use in connection with legal works. The *Catalogue général de la Librairie française*,[27] begun by Lorenz and continued by Jordell and Stein, covers practically all literary productions between 1840 and 1921. *La bibliographie de la France*,

[25] Capitant, H. Comment il faut faire sa thèse de doctorat en droit. 2. éd. Paris, Dalloz, 1928. 87 p.

[26] Gautier, J. La bibliothèque de la Faculté de droit de Paris. Guide à l'usage des étudiants. Paris, Recueil Sirey, 1919. 58 p.

[27] Lorenz, Jordell, Stein. Catalogue général de la Librairie française. 1840–1921. Paris, Champion, 1867–1927. 29 v.

Journal géneral de l'imprimerie et de la Librairie appears weekly and lists the works alphabetically, according to names of authors, with a classified supplement, *La semaine du livre*, cumulated monthly as *Les livres du mois*. An author index and a classified subject index are published annually. It covers all books deposited with the Ministry of the Interior in compliance with French copyright laws. The Bibliothèque Nationale published the *Bulletin mensuel des récentes publications françaises*, from 1882 to 1920 and the *Bulletin mensuel des publications étrangères* from 1877 to 1921. It now issues the *Bulletin des acquisitions.*

LAW LIBRARIES

Some reference might be made at this point to the more important libraries.

As would be expected, the *Bibliothèque Nationale*, occupying in France the same position as the British Museum in England and the Library of Congress in this country, contains the richest collection of legal literature and historical documents. As it is visited daily by thousands, better results can often be obtained by using some of the smaller libraries. The *Bibliothèque Sainte Geneviève*, also a general library, is likewise rich in French legal works.

Of the libraries devoted especially to legal publications, the more important are those of the law schools. Naturally that of the Paris school is the most important. Consisting of somewhat over a hundred thousand volumes, its collection is now increasing at the rate of about 5,000 books and pamphlets a year through purchase, gift, and exchange. The exchange of theses with French and foreign universities has permitted the library to build up an excellent collection of this type of legal works which, due to the limited number published, are often difficult to obtain.

Another important law library is the *Bibliothèque de l'ordre des avocats* at the Palace of Justice. Other libraries are the *Bibliothèque de legislation étrangère* at the Ministry of Justice, containing a unique collection of the literature relating to the legislation of practically all countries in the world; the *Bibliothèque de la Société de législation comparée*, containing about 22,000 volumes devoted to interna-

tional law and French and foreign legislation; and the *Bibliothèque de la Préfecture de la Seine*, which is particularly rich in publications concerning administrative law.

Several of the libraries just referred to have printed catalogues which require mention. The library of the Bar association published catalogues [28] in 1866–67 and 1880. The library of the prefecture of the Seine published a 2-volume catalogue [29] in 1892 and 1898. A catalogue [30] of the *Bibliothèque de la Société de législation comparée* was begun by Christian Daguin and completed by Fernand Daguin. A second edition was published in 1899. Several years ago the *Office de législation étrangère* began the gigantic task of preparing a synthetic catalogue or encyclopedia of the juristic literature of the world based on the catalogues of such libraries as the Library of Congress and other national libraries. While the library of the Paris Law School has no printed catalogue its card indices give complete references to general works and theses. In addition there is a complete index of the articles appearing in the reviews received by the library.

LAW PUBLISHERS

Some mention should be made at this point of the principal law publishers. The *Librairie Dalloz*, or as it is often designated *Dalloz*, had its origin in the court reports established by Désiré Dalloz, who in 1822 took over the direction of the *Journal des audiences de la Cour de Cassation*, the precursor of *Dalloz périodique*. (Court reports, *infra.*) In 1845 Désiré and Armand Dalloz began the publication of an encyclopedia, and since then the *Librairie*

[28] Catalogue des livres imprimés de la Bibliothèque des avocats à la Cour impériale de Paris. Paris, Durand, 1866–67. 2 v. Catalogue des livres imprimés de la Bibliothèque des avocats à la Cour d'appel de Paris. Tome I. Théologie et jurisprudence. Paris, Durand, 1880. 486 p.

[29] Catalogue de la Bibliothèque administrative de la Préfecture du département de la Seine. (Section étrangère) Paris, Imprimerie nationale. 1892. 711 p. (Section française) Paris, Imprimerie municipale, 1898. 890 p.

[30] Daguin, C. Catalogue de la Bibliothèque de la société de législation comparée. 2. éd. Paris, Pichon, 1899. 599 p.

Dalloz has been publishing, in addition to court reports and encyclopedias, annotated editions of the codes, treatises, and monographs covering the entire field of law. The *Société anonyme du Recueil Sirey* had its origin in the court reports established by J. B. Sirey at the end of the eighteenth century. The present company represents an amalgamation of a number of publishing houses, and, like Dalloz, publishes annotated editions of the codes, encyclopedias, treatises, and monographs covering the entire field of the law. In this connection attention should be called to the fact that the annotated codes cited under the name Sirey are not published by the *Recueil Sirey* but by G. Godde, likewise an important publisher of legal works. The *Librairie Arthur Rousseau* is also important, and mention should be made of the *Librairie générale de droit et de jurisprudence.* Giard and Brière, now conducted under the name of Marcel Giard, were at one time among the most progressive publishers of France and are responsible for the publication in French of some of the more notable German, Italian, and other foreign works on law, economics, and sociology.

All these publishers are also booksellers and have their offices on Rue Soufflot. As an important center of legal interest this street has acquired world fame.

LEGISLATION

The modern era of French legislation begins with the promulgation of the Civil code in 1804. Historically, however, the assumption of national sovereignty by the Assembly on June 17, 1789, marks the end of the old and the beginning of a new legislative régime. Legislation prior to 1789 is properly a part of legal history and will be discussed in connection with that subject in a subsequent chapter.

The general growth of the law through legislation, particularly with reference to civil law subsequent to 1804, has been dealt with by a number of writers such as Professors Charmont, Duguit, and Morin, whose works will be referred to again in connection with the discussion of the Civil code. A very good summary may be found in the *Traité élémentaire de droit civil* by Professors Planiol and

Ripert (v. 1, pp. 39–48) and the *Cours élémentaire de droit civil* by Professors Colin and Capitant (v. 1, pp. 21–24). The civil legislation from 1789 to 1804, usually called the intermediary period, was made the subject of a special study by Sagnac in *La législation civile de la Révolution française*,[31] published in 1898. The subject is, of course, dealt with as historical material in legal histories which go beyond the end of the *ancien régime*.

Official Publications

The official publications recording French legislation, including laws and decrees, are the *Journal officiel* or Official Gazette and the *Bulletin des lois*. The former first appeared on May 5, 1789, under the title *Moniteur universel* and became the official organ of the Government in 1799. In 1869 the *Moniteur*, without changing its form, became the *Journal officiel de l'Empire français;* and on September 5, 1870, the name was changed to *Journal officiel de la République française*. The *Journal* appears daily and forms annually from 12 to 15 volumes. The portion containing laws and decrees is issued separately. The *Bulletin des lois*, which was created by the convention through an act of December 4, 1793, began publication June 13, 1794 (25 prairial, year II). Since 1832 it has been published in two parts—the principal part (subdivided in 1909 into two sections) containing laws and decrees of general interest and special and local laws and the supplementary part containing special and local decrees. The *Bulletin* appears bimonthly and usually forms two volumes per year. The legislation of the revolutionary period, prior to June 10, 1794, the date of the first act in the *Bulletin*, is contained in an 18-volume publication, ordinarily designated under the title *Collection générale des lois*. In 1806, the earlier edition having become rare, a new and abridged edition in eight volumes was published under the title *Lois et actes du Gouvernement*. This later edition is usually designated as forming the first part of the *Bulletin des lois*. The *Bulletin* is published by the Government press.

The official publication of laws and decrees is important in determining the time at which they go into effect. The

[31] Sagnac, P. La législation civile de la Révolution française (1789–1804). Paris, Hachette; Fontemoing, 1898. 445 p.

present system was inaugurated by a decree of November 5, 1870, which, modifying article 1 of the Civil code, provides that a new law is effective in each *arrondissement* a full day after the copy of the *Journal officiel* in which it is contained arrives at the seat of the *arrondissement*. The same decree also provides that the insertion in the *Bulletin* of a law not published in the *Journal* operates as promulgation. With respect to decrees the same system ordinarily applies to those which are published in the *Journal officiel*, but the Government may provide that a decree become effective immediately. Good short discussions of the promulgation of laws appear in the elementary treatises of Professors Planiol and Ripert and Colin and Capitant.

Private Publications

Both the *Journal officiel* and *Bulletin* are difficult to use for research purposes, though there are indices to each. Better results can be obtained by referring to private publications. Of these the most complete is the *Collection complète des lois et décrets d'intérêt général*, which was founded by Duvergier and continued by Bocquet. It appears monthly and is published by the *Recueil Sirey*. Legislation from 1788 through 1830 was published in a 30-volume edition between 1825 and 1831, and since then a volume has been added each year. Each volume contains an index, and, in addition, there are separate indices for the periods from 1831 to 1889 and 1890 to 1899.

The principal legislative acts also appear in the *Annuaire de législation française*, with important commentaries. This annual collection of laws has been published since 1882 by the *Société de législation comparée*. A periodical, *Lois nouvelles*, likewise published since 1882, reports important legislation. This useful publication, which appears bimonthly, is made up of two parts—the first containing commentaries on legislation, and the second legislative texts without commentary.

Collections of important legislative acts, often with valuable notes and commentaries, are published by the *Recueil Sirey* and the *Librairie Dalloz*. The *Lois annotées* of the *Recueil Sirey* is an appendix to the court reports (*Recueil général*) of the same publishers and appears monthly. These annotated laws, however, form a separate collection.

The laws from 1789 through 1848 are contained in two volumes—those from 1849 through 1854 and from 1855 through 1860 in a third and fourth volume and since 1861 in one volume for every five years. The annotated laws published by Dalloz appear in the fourth part of its *Recueil périodique* (*infra*).

War Legislation

Since 1918 Dalloz has also been publishing monthly texts of laws and decrees in its *Bulletin législatif*. This latter publication is a continuation of an important 26-volume collection of war legislation and regulations which was published under the title *Guerre de 1914*. It is sometimes called *Collection rouge*. The *Recueil Sirey* published a somewhat similar collection, *Législation de la Guerre*, consisting of 12 volumes. In this connection reference should be made to *La législation des années de guerre*, in two volumes, which gives texts and analyses of war legislation. This publication, in two volumes, was compiled by Colin and published by Godde.

Codes and Laws

Strictly speaking, codes are legislative acts, but the official and private editions of the different codes will be discussed later in connection with the discussion of their subject matter. Attention should be called, however, to the fact that the annotated editions are annotated to both court decisions and legislative acts, the latter being ordinarily set forth in full. A number of publishers issue all the codes in one collection along with the existing legislation in force (*Lois usuelles*). The more important collections of this type are those cited under the names of their compilers, Roger and Sorel,[32] Rivière,[33] and Carpentier.[34] Only the last seems to have been kept up to date. The twentieth edition was edited by Colin[35] and consists of two volumes, one devoted to the codes and the other

[32] Roger, A., et Sorel, A. Codes et lois usuelles classées par ordre alphabétique. Paris, Garnier, 1882. 2 v.

[33] Rivière, H. Codes français et lois usuelles. Paris, Pichon et Durand-Auzias. 1914. 2 v.

[34] Carpentier, A. Codes et lois pour la France, l'Algérie et la Tunisie. 19. éd. Paris, Marchal et Godde, 1914. 2 v.

[35] Colin, P. Codes et lois pour la France, l'Algérie et les colonies. 20. éd. Paris, Godde, 1924–25. 2 v. Supplément. 1927. 478, 63 p.

(sold separately) to legislative enactments. It is kept up to date through a publication called *La semaine juridique.* A very good but smaller publication in the nature of a handbook was until recently published by Dalloz under the title *Codes d'audience.*[36] The five codes are united in one publication under the title *Petits codes et lois Carpentier,*[37] published by Sirey. When completed it will include existing legislation.

TREATIES

There are two important French collections of treaties. The *Recueil des traités de la France* [38] was compiled by de Clercq and covers the period from 1713 to 1906. The collection of *Traités et conventions en vigueur* [39] is an official publication of the Ministry of Foreign Affairs and was compiled with the assistance of Professor Basdevant of the University of Paris. Franco-American treaties are also reported in Malloy's *Treaties, conventions, and agreements* and in the *Treaty series* printed at the United States Government Printing Office.

COURT REPORTS

Doctrine and Jurisprudence

When dealing with interpretation of legislative acts, including codes, French legal writers often employ the terms "*doctrine*" and "*jurisprudence.*" The former applies to interpretation by text writers whose treatises, to employ an expression of Professors Planiol and Ripert, occupy much the same position in legal science as public opinion does in politics. As persuasive authority they are the directive force of both legislation and judicial decision.

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[36] Codes d'audience. 17. éd. Paris, Dalloz, 1926. 477, 53 p.

[37] Carpentier, A. et E. Petits codes et lois Carpentier. Paris, Recueil Sirey, 1929. 2 v.

[38] Clercq, A. de. Recueil des traités de la France, pub. sous les auspices du Ministère des affaires étrangères. 1713–1906. Paris, Amyot; Pedone, 1864–1917. 23 v. Vol. 23, incomplete, in two parts.

[39] Basdevant, J. Traités et conventions en vigueur entre la France et les puissances étrangères (Publication officielle du Ministère des affaires étrangères). Paris, Imprimerie nationale, 1918–22. 4 v.

Authority of Court Decisions

The term "*jurisprudence*" is applied to court decisions. It would seem from the provisions of the Civil code that judicial decisions can never technically acquire the force of law. Article 5 in effect forbids a court to attribute to a decision the binding force of precedent. Under article 1351 the effect of a decision of a court is limited to the parties. But in his *Introduction à l'étude du droit civil*[40] (p. 54 *et seq.*) Professor Capitant states that as a matter of fact, in spite of these provisions, judicial decisions enjoy an authority comparable with that of the written law. When a legal question is first submitted to lower courts for decision they may reach different results, but after the matter has been submitted to the court of last resort, *Cour de Cassation*, the solution of the latter is ultimately followed by all courts and the law "is settled" or, to use a French expression, the "jurisprudence becomes fixed." While a reversal of former decisions is always possible it occurs but rarely and then, only, when conditions demand it. As a result the decisions of courts, particularly the *Cour de Cassation*, are cited by counsel and occupy in French legal literature a position which is only secondary to that of the codes and statutory law.

Court of Cassation

Judicial organization will be discussed in connection with procedure, but it would not be out of place to mention here that the decisions of the *Cour de Cassation* as the court of last resort are the most important. The decisions of the court are reported in an official publication, *Bulletin des arrêts de la Cour de Cassation*, published by the Government press. Divided into two parts, the *Bulletin* has reported civil cases since 1792 and criminal cases since 1798. The civil series reports only those cases which come before the *Chambre civile*, and not decisions of the *Chambre des requêtes* rejecting applications for review. While valuable, in that it gives all the decisions of the criminal and civil chambers, the *Bulletin* is not habitually consulted by lawyers and therefore is not as important a part of legal literature as the reports published through private enterprise.

[40] Capitant, H. Introduction à l'étude du droit civil. Notions générales. 4. éd. Paris, Pedore, 1922. 455 p.

Of these the most valuable are those published by Dalloz and Sirey.

Private Reports

The *Recueil périodique et critique*, generally known under the name of *Dalloz* or *Dalloz périodique*, had its origin in the *Journal des audiences de la Cour de Cassation*, a court report which was originally limited to decisions of the *Cour de Cassation*. Published after 1822 under the direction of Dalloz, the *Journal* took the name of its director in 1825. The present report was founded in 1845. It appears monthly, forming a volume a year, and is divided into four principal parts: (1) Decisions of the Court of Cassation; (2) decisions of appellate courts and courts of original jurisdiction (*tribunaux*); (3) administrative decisions; and (4) laws and decrees along with legislative reports and discussions. In addition, a fifth part contains head notes of court decisions (*sommaires*). The *Recueil périodique* is completed by alphabetical subject-index digests (*tables*). The index for the period from 1845 to 1867 consists of two volumes. For the period from 1867 to 1907 there is a one-volume index for each ten years, and since the latter date one volume for every five years. Inasmuch as some of the volumes of the reports between 1845 and 1897 are difficult to procure, the indices for the periods prior to the latter date may be used as a supplement to the reports. Dalloz also reports weekly, in its *Recueil hebdomadaire de jurisprudence*, begun in 1924, the text of decisions of particular interest. This publication contains a special part, entitled *chronique*, consisting of short articles on legal matters. Citations to the *Recueil périodique* give the year, the part, and the page, *e. g.*, D. P. (or D.), 1900.2.350. Citations to the *Recueil hebdomadaire* give the year and the page, *e. g.*, D. H. 1924.189.

The *Recueil général des lois et des arrêts de Sirey* goes back to 1791. Decisions prior to 1830 are collected in a 9-volume publication. At present the *Recueil* appears monthly, and since 1830 it has formed a volume a year. The publishers are now engaged in preparing a 20-volume abridged reprint of the reports covering the period from 1791 to 1900 (*Refonte du Recueil Sirey*) of which nine volumes reporting decisions from 1876 to 1900 have already appeared. Each volume of the *Recueil* is divided into four

parts: (1) Decisions of the Court of Cassation; (2) decisions of appellate and lower courts; (3) administrative decisions, and (4) foreign decisions. Like the *Recueil périodique* of Dalloz the *Recueil général* is also supplemented by a valuable publication containing head notes (*sommaires*) called *Recueil des sommaires*. As already stated, legislative acts and decrees are reported in *Lois annotées*, which, while an appendix to the court reports, are published separately. An extremely important part of the *Recueil Sirey* is its alphabetical subject-index digest (*tables*). That for the period from 1791 to 1850 consists of four volumes, and between 1850 and 1910 six decennial volumes were published. Since 1910 there has been a volume every five years. This index digest is particularly valuable, inasmuch as it gives, in addition to references to decisions, a résumé of diverse opinions of text writers.

Citations to the *Recueil général* give the year, the part, and the page, *e. g.*, S. 1903.1.5.

Two other important reporters were published during the nineteenth century but were absorbed into the *Recueil général* published by Sirey.

The *Pandectes françaises*, forming one volume annually, began publication in 1886 and was combined with the *Recueil général* in 1908, continuing, however, to appear, until recently, under separate cover. The collection includes *Pandectes chronologiques* reporting decisions from 1789 to 1886 and forming the first six volumes of the complete set.

The *Journal du palais* also began publication as a distinct periodical. Decisions from 1791 through 1836 were collected in a 27-volume edition in 1837, and beginning with that date, one volume was published annually. In 1866 the *Journal* was united with the *Recueil général*. From then on its content was the same though the cover remained different. In 1924, the *Pandectes françaises*, the *Journal du palais*, and the *Recueil* were definitely combined into one publication with the same content and cover.

While the reported decisions of the courts are in themselves of value, an important feature of the private reporters which have just been mentioned consists of the notes and commentaries which accompany the cases. The unique sys-

tem of combining court decision and commentary has, it is believed, a value which would be well worth consideration by publishers in this country. The comments are not merely annotations of previous decisions, like L. R. A., but critical comment by an authority on the order of our case notes and comments in legal periodicals. Combining the functions of a court reporter and case notes and comments the French system not only serves the useful purpose of furnishing the lawyer valuable information with respect to the reported case, but, at the same time, through wholesome criticism by leading authorities, permits the bar and the teaching profession to bring to bear on the shaping of the law their accumulation of knowledge and thought. Unlike those of the law reviews of this country, the editorial staffs of the two leading reporters include lawyers, judges, and teachers. One of the results of this combination has been to bring the bench and the bar and the practitioner and teacher into closer contact, with the result that doctrine and jurisprudence instead of working at cross purposes are engaged together in the problem of shaping and applying the law. An interesting article by Professor Meynial on case comments and notes appears in the *Livre du centenaire* (v. 1, p. 173), under the title *Les recueils d'arrêts.*

In addition to the monthly publications just discussed, there are a number of important daily legal journals which also report court decisions. They are the *Gazette du palais*, the *Gazette des tribunaux*, the *Loi*, and the *Droit;* the first two also publish, monthly, the decisions already reported in the dailies. The *Gazette du palais* began publication of its monthly reports in 1881 and the *Gazette des tribunaux* in 1898. Both form several volumes annually and like the reporters already mentioned contain valuable commentaries.

Besides the reporters, devoted to court decisions generally, there are a number of important publications which report decisions relating to some particular field of the law. Decisions in commercial matters are reported monthly in the *Journal des tribunaux de commerce* which was founded in 1852. Cases involving maritime as well as other commercial matters are reported in several periodicals published in im-

portant commercial centers and sea ports. These include the *Journal de jurisprudence commerciale et maritime*, published at Marseilles; *Jurisprudence commerciale et maritime de Nantes*, founded in 1859 and since 1923 published by the bar of Nantes and the *Recueil de jurisprudence commerciale et maritime du Havre*, founded in 1855.

The most complete report of administrative decisions is the *Recueil des arrêts du Conseil d'État*, a monthly publication, which was founded in 1821. It is sometimes referred to as *Recueil Panhard*, after its founder, and is often called *Recueil Lebon*, after one of its later directors. It should be recalled that both Dalloz and Sirey devote a special part of their reports to administrative decisions.

In addition to reporters, a number of the more important periodicals—which will be discussed in connection with their subject matter—contain sections devoted to court decisions.

ENCYCLOPEDIAS—DICTIONARIES

Encyclopedias

Legal encyclopedias, giving as they do a general exposition of legislation, doctrine, and jurisprudence, naturally constitute an important and valuable part of French legal literature. Consisting of separate treatises and monographs, arranged alphabetically according to subject matter, they cover the entire field of the law or sometimes a particular branch. Of those covering the whole of the law, the most important are the *Répertoire général alphabétique* and the *Répertoire pratique*.

The *Répertoire général alphabétique*,[41] in 37 large volumes, was published between 1886 and 1906 under the direction of Fuzier-Herman, a former magistrate; Carpentier, an advocate; and Frèrejouan du Saint, also a former magistrate. A supplement of about 10 volumes is now being prepared by the *Recueil Sirey* under the direction of Frèrejouan du Saint and Professor Eugene Godefroy. At present, volumes 1 to 7 have appeared. It is usually cited under the name Fuzier-Herman.

[41] Fuzier-Herman, E., Carpentier, A., et Frèrejouan du Saint, G. Répertoire général alphabétique du droit français. Paris, Recueil Sirey, 1886–1906. 37 v. Supplément, 1911–28. 7 v.

The *Répertoire pratique*,[42] although less voluminous than the *Répertoire général*, gives a very practical and valuable exposition of French legislation and decision. The entire publication consisted originally of 12 volumes, which appeared between 1910 and 1926. A 2-volume supplement has now been added, having been published in 1927 and 1929. In addition, Dalloz published during the course of the last century a more extensive encyclopedia which, while still valuable, is unfortunately somewhat out of date. This publication, *Répertoire méthodique*,[43] was compiled between 1845 and 1870. A supplement was added between 1887 and 1897.

More recently a somewhat similar publication, *Juris-classeurs*,[44] has been added to the list of modern encyclopedias. The entire collection consists of a number of different parts designated under the headings *civil*, *pénal*, *procédure civile*, *commercial*, *sociétés*, *notariat*, *enregistrement*. The publication is made up of interchangeable sheets which are kept up through addition or replacement by new sheets. While the plan may be a good one, the *Juris-classeurs* does not seem to be as popular with the teaching profession as the other encyclopedias. It is, however, often recommended by practitioners.

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[42] Dalloz. Répertoire pratique de législation, de doctrine et de jurisprudence, par G. Griolet, C. Vergé, C. Kœhler et W. Robinet. Paris, Dalloz, 1910–26. 12 v. Supplément. 1927–29. 2 v.

[43] Dalloz, D. Répertoire méthodique et alphabétique de législation, de doctrine et de jurisprudence. Paris, Dalloz, 1845–70. 44 v. Supplément, 1887–97. 19 v.

[44] Juris-classeurs. Paris, Librairie des Juris-classeurs. Godde. The collection was made up of the following parts at the end of 1927: Civil: Code civil annoté, 18 v.; Jurisprudence, 2 v.; Annexes, 2 v.—Procédure civile: Code de procédure civile annoté, 5 v.; Jurisprudence, 1 v.; Formulaire analytique de procédure civile, 3 v.—Commercial: Code de commerce annoté, 4 v.; Jurisprudence, 1 v.; Annexes, 2 v.—Pénal et d'instruction criminelle: Code pénal annoté, 2 v.; Code d'instruction criminelle annoté, 2 v.; Jurisprudence, 2 v.—Accidents du travail: Textes, 1 v.; Commentaire, 2 v.; Jurisprudence, 2 v.—Sociétés: Traité, 9 v.; Formules annotées, 2 v.—Justice de paix, 5 v.—Notarial: Répertoire doctrinal, 26 v.; Formules, 16 v.; Recueil, 1 v.; Fiscal, 2 v.; Enregistrement, 2 v. The publishers intend to add other volumes to the various parts.

The *Nouveau répertoire*,[45] usually cited under the title *Pandectes françaises*, is also an excellent comprehensive piece of work, but its place has been largely taken by the encyclopedias just mentioned. The original encyclopedia was published between 1886 and 1905 and a 4-volume supplement appeared between 1907 and 1910.

In connection with encyclopedias, mention should be made of the much earlier and extremely popular encyclopedic works of Merlin. His *Répertoire universel*[46] was published in a fifth edition in 1827 and 1828 and his *Questions de droit*[47] in a fourth edition between 1827 and 1830.

Encyclopedias devoted to particular branches of the law will be discussed in connection with their subject matter.

Dictionaries

The most complete French legal dictionary is the *Dictionnaire pratique*,[48] published by the *Librairie* Dalloz in encyclopedic form.

There are several small Anglo-French legal dictionaries. The more recent include a *Dictionary of Anglo-Belgian law*[49] by Anspach and Coutanche, *A French-English dictionary of legal and commercial terms*[50] by Graham Olver, and *Dictionnaire juridique anglais-français*[51] by Fernand-Laurent and Daumas. There is also an earlier *French-English dictionary of legal words and phrases* by Williamson.[52]

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[45] Pandectes françaises. Nouveau répertoire de doctrine, de législation et de jurisprudence. Paris, Pichon et Durand-Auzias, 1886–1905. 59 v. Supplément. 1907–10. 4 v. Begun by Rivière and continued by Weiss and Frennelet.

[46] Merlin. Répertoire universel et raisonné de jurisprudence. 5. éd. Paris, 1827–28. 18 v.

[47] Merlin. Recueil alphabétique des questions de droit. 4. éd. Paris, Garnery, 1827–30. 8 v.

[48] Dictionnaire pratique de droit. Paris, Dalloz, 1913–14. 2 v. Supplément and additions, 1922, 1925, 1926, 1929.

[49] Anspach and Coutanche. Dictionary of Anglo-Belgian law. London, Sweet and Maxwell, 1920. 181 p.

[50] Olver, Graham. A French-English dictionary of legal and commercial terms. London, Stevens and sons, 1925. 170 p.

[51] Fernand-Laurent et Daumas, G. Dictionnaire juridique anglais-français et français-anglais. Paris, Rousseau, 1927. 227 p.

[52] Williamson, A. A French-English dictionary of legal words and phrases including legal commercial terms most commonly in use. London, Stevens and sons, 1911. 135 p.

LEGAL EDUCATION

Educational methods are apt to be looked upon as a matter of common knowledge by those most intimately connected with them, *i. e.*, teachers, and, unless the subject of special investigation resulting in reports, such as those of the Carnegie Foundation in this country, they are not likely to be dealt with in current literature. Prior to 1928 there seems to have been no comprehensive study of legal education in France, and information necessarily had to be gleaned from student guides and a few articles in periodicals, or, better, from actual contact with French law schools and their faculties. This lack is now covered by a critical comparison of the teaching of law in France and in the United States in a work by Valeur and Lambert, *L'enseignement du droit en France et aux États-Unis.*[53]

Various publishers issue student guides. The best seems to be *Guide Dalloz*[54] which gives in convenient form the regulations of the Paris Law School with respect to matriculation, courses of study, degrees, examinations, scholarships and prizes. Professor Berthélemy, dean of the Paris Law School, is the author of an interesting sketch in nontechnical language appearing in the *Revue des deux Mondes* (v. 36 (1926), p. 303) in which he discusses instruction, teachers, and students, particularly in the Paris school. A very good, short, but comprehensive study, by J. P. Bullington of the Houston (Tex.) bar, appeared in the Texas Law Review in 1926 under the title *Legal education in France.* (v. 4, p. 461.) Meager and superficial information may be obtained from two articles appearing in the Pennsylvania Law Review in 1912 and 1913—*A morning at the Paris Law School* and *A Paris law examination* (v. 61, p. 33, v. 62, p. 187.) And a very good but now superannuated article on French schools of law was published in the Law Quarterly Review (v. 6, p. 42) by Malcolm McIlwraith in 1890. The

[53] Valeur et Lambert. L'enseignement du droit en France et aux États-Unis. Paris, Giard, 1928 (Bibliothéque de l'Institut de droit comparé de Lyon, t. 23) cxix, 393 p.

[54] Université de Paris. Guide Dalloz de l'étudiant en droit. Année scolaire 1927-28. Paris, Dalloz, 1927. 117 p.

Journal of Comparative Legislation (v. 2, p. 131) published an address, *The teaching of law in France*, delivered by Thomas Barclay before the American Bar Association in 1900. The scientific and social missions of schools of law, with particular reference to the school at Nancy, were dealt with by Professor Gény in an address delivered on the occasion of the sixtieth anniversary of the reestablishment of the Nancy Law School. This address which was subsequently published in pamphlet form [55] gives an excellent idea of the concept entertained by a large number of French law teachers of the mission of legal education in general.

Law Schools

An American, having as a background, contact with the so-called better schools in this country, is likely to be surprised by the size and variety of the student bodies in French schools. One would naturally expect the school at Paris to be the largest; but it is a distinct surprise to find that it numbers its student body by thousands where, with one notable exception, outstanding American schools number theirs by hundreds and are all tending consciously toward smaller enrollment by insisting on high quality. In the article previously referred to, Professor Berthélemy gives 8,557 as the total enrollment in the Paris Law School during 1925. Since then, there has been some increase. Although the discrepancy between the enrollment at Paris and in the provincial schools is great (that in the next largest, Lyon, having been 773 in 1925, and that in the smallest school well over 300), comparatively, student bodies seem large.

Enrollment

The size of enrollment in French schools is due to a number of causes. Including the University of Algiers, there are only fifteen universities in France proper having law schools authorized to grant the degree of *licence*, which is a prerequisite to practice in French courts as advocate. In addition, while practically all students in American schools intend to practice, an important part of those in French schools study law for other purposes. The article

[55] Gény, C. La mission scientifique et sociale des Facultés de droit à l'heure actuelle. Comment elle est comprise et pratiquée à Nancy. Paris, Recueil Sirey, 1925. 35 p.

in the Texas Law Review (4 Tex. L. R. 461) already referred to, gives a short description of the classes of students in French schools.

Some knowledge of law is considered to be necessary in a number of occupations in France and a not inconsiderable portion of the student bodies in the various schools consists of students who for one reason or another only attend lectures (*auditeurs*) or who are preparing for the certificate of "capacity in law" (*capacité en droit*). Even a number of those preparing for the *licence* do not intend to engage in court practice but expect to go into one of the allied professions such as that of notary or pleader (*avoué*) or to take up Government work or even to use their knowledge of law as an asset in ordinary business pursuits. In addition, inasmuch as a number of countries have modeled their legal system on that of France, French schools, particularly the Paris Law School, draw students from jurisdictions other than France, very much as national law schools in the United States draw students from jurisdictions other than those in which they are located.

Degrees

Leaving aside the certificate of capacity in law, preparation for which requires no prior diploma, the degrees and diplomas awarded in French law schools comprise the *licence*, diplomas of advanced study (*diplomes d'études supérieures*) and the doctorate. Students who enroll for the *licence* are required to have the French baccalaureate or its equivalent. The list of degrees which take the place of the baccalaureate for French students is too long to set forth in detail here. The degrees and diplomas listed are, however, seemingly more than the equivalent of the baccalaureate. Foreign students who do not have the French baccalaureate are in principle entitled to enroll, provided they have completed studies which permit them to undertake advanced work in the universities of their own countries. The ministry of public education publishes annually a list of foreign degrees, diplomas or certificates which will be recognized as permitting their holders to pursue advanced work. The course of study in the law schools normally covers three years, examinations being given annually. Its content is governed by a decree of August 2,

1922, and practically all the work is compulsory. Also, the courses are somewhat broader in their scope than those given in American schools. In addition to subjects which normally form a part of legal *curricula* such as constitutional law, civil law, criminal law, commercial law and procedure, the course of study in French universities includes Roman law, legal history, and financial legislation as required subjects, and fiscal and industrial legislation, among others, as optional subjects, as well as two years of political economy.

Diplomas for advanced studies are given in four different lines of endeavor—one in Roman law and legal history, one in private law, one in public law, and one in political economy. The *licence* is a prerequisite. The doctorate is conferred on students who have published a printed thesis which has been found worthy by an examining committee. A candidate for the doctor's degree must also have obtained two diplomas for advanced study. The reputation of the doctorate in law was materially compromised by the military law of 1889 which excused its holders from military service. But the abolition of this exemption, in decreasing the number of applicants, increased the standards required, with the result that doctor's theses form a valuable part of French legal literature, often constituting the only literature on a given point. Reference should again be made at this point to Professor Capitant's little book on the preparation of the doctor's thesis.[56]

Faculties

It would of course be presumptuous for an outsider to attempt to give an estimate of the relative standing of the different schools. Due to its location in the political and cultural center of France, that at Paris is naturally able to draw the largest student body, and, in addition, the greatest number of outstanding legal educators. But no single school has a monopoly of the best legal talent. Hence it should occasion no surprise to find that eminent scholars are located among the schools in the provinces. To mention only a few examples, Bordeaux can boast of the late

[56] Capitant, H. Comment il faut faire sa thèse de doctorat en droit. 2. éd. Paris, Dalloz, 1928. 87 p.

Professor Duguit and Professor Bonnecase; Lyon of Professors Lambert, Pic, and Josserand; Montpellier of the late Professor Charmont; Grenoble of Professor Cuche; Toulouse of the late Professor Hauriou; and Nancy of Professor Gény. Aubry and Rau were at Strasbourg when they first produced their classical work on the Civil code.

In connection with the eminence of the names of members of various law faculties, attention should be called here to the fact that law teachers have contributed a preponderant part to the legal literature of France since the promulgation of the Napoleonic codes. Mention has already been made of Aubry and Rau. Later works on civil law are connected with the names of Demolombe, Beudant, Planiol, Ripert, Baudry-Lacantinerie, Colin, Capitant, and Demogue, all of whom have been or still are prominent law teachers. In the field of commercial law the outstanding treatises are the works of Thaller and Percerou and Lyon-Caen and Renault; in the field of public law the prominent names include Professors Duguit, Hauriou, Berthélemy, Jèze, Bonnard, and Appleton; and in criminal law, a subject which has been but little dealt with by American and English legal educators, the best literature is also the work of members of law faculties.

While a few of the smaller schools call on prominent members of the bar to supplement the regular teaching staff, full-time professors are the rule and part-time teachers the exception. Professors, however, are frequently called upon for legal opinions.

Method of Instruction

To the American who has come to accept the case method as the only method for legal instruction the lecture method may seem somewhat of an anachronism. Supplemented by conferences, consisting of informal discussions, it is, however, the mode employed generally in French as in other European law schools.

One of the results of the lecture system has been the publication of notes and small texts as aids or even cram books. While students are always advised to depend on lectures as superior to books, in later years there seems to have been a tendency on the part of teachers to cooperate with legal publishers in preparing small texts. These texts, while not

to be confused with such superior works as the scholarly elementary treatises of Professors Planiol and Ripert and Colin and Capitant in the field of civil law or the more pretentious manuals in commercial and criminal law, such as those of Professors Thaller and Percerou or Garraud, give important summaries and may be of value if one desires only a superficial knowledge of various parts of the law. The best seem to be those published by the houses of Dalloz[57] and Sirey.[58]

The American case method has received some attention on the part of French teachers. Several years ago, with our method in mind, Professors Lambert and Capitant, with the collaboration of a number of instructors, compiled a small collection of legal problems which was published under the title *Espèces choisies.*[59] An excellent exposition of the method was published in the *Revue internationale d'enseignement* in 1920 (p. 160), under the title *Le système du "case,"* by Pierre Lepaulle, who, while not contending

[57] Petits précis Dalloz. Paris, Dalloz. The collection, the parts of which are revised from time to time, includes: Droit administratif par L. Rolland, 1 v.; Droit constitutionnel par A. Bonde, 1 v.; Droit civil, 3 v.; Droit commercial par L. Lacour, 1 v.; Droit criminel par P. Cuche, 1 v.; Droit maritime par L. Lacour, 1 v.; Droit romain par P. Collinet and A. Giffard, 2 v.; Economie politique par P. Reboud, 2 v.; Histoire du droit par A. Bonde; Législation industrielle par H. Capitant and P. Cuche; Procédure civile et commerciale par P. Cuche; and Voies d'exécution par P. Cuche. The last four 1 v. each.

[58] La licence en droit. Précis élémentaire. Paris, Recueil Sirey. The collection comprises: Droit civil par Joseph Hémard, v. 1, 1928; v. 2, 1st and 2d parts, 1929; Droit administratif par Maurice Hauriou, 1925, 521 p.; Droit constitutionnel par Maurice Hauriou, 1925, 318 p.; Droit administratif par Roger Bonnard, 1926, 555 p.; Droit pénal et de procedure pénale, par A. Roux, 1925, 425 p.; Législation industrielle par Georges Scelle, 1927, 362 p.; D'Economie Politique par H. H. Truchy, 2 v., 1927; Procédure civile par Ch. Cézar-Bru, 1927, 510 p.; Voies d'exécution, 7e éd. par Louis Josserand, 1925, 406 p.; Droit international privé par J. P. Niboyet, 1928, 361 p.; Droit romain par Ernest Perrot, 1927, 468 p.; Droit romain (Notes de cours) : Les obligations, 1926, 301 p.; Droit public par Roger Bonnard, 1925, 376 p.

[59] Capitant et Lambert. Espèces choisies empruntées à la jurisprudence, publiées par un groupe de professeurs des Facultés de droit. Paris, Dalloz, 1924. 2 p. l., ii, xix, 301 p.

that it be adopted in France to replace the lecture method, urged that it be considered by French teachers for its value in connection with the teaching of a system of jurisprudence not based on the common law.

Before closing the discussion on legal education attention should be called to a comparatively recent work criticizing the methods of French law schools, *L'enseignement du droit et la formation du citoyen*,[60] published by Professor Aron, in charge of the course of study at the law faculty of the University of Caen. A number of points in legal education were also critically dealt with in an article, *Facultés et écoles de droit*, which was published by Professor Cuche, of Grenoble, in the *Revue internationale de l'enseignement* for 1918 (p. 355). Attention might also be called here to a recent publication by Professor Bonnecase, *Qu' est ce qu' une faculté de droit*.[60a] In addition, mention should be made of a recent work of a popular nature, dealing with students, by Professor Mestre, of Paris.[60b]

PHILOSOPHY OF LAW

Philosophy of law, as the term (*philosophie du droit*) is used by French writers, has as its object a search for the underlying foundations and purposes of law. Taking as their background the entire field of the intellectual movement in Europe during the course of the last century, comprised within the general scope of the terms "theoretical jurisprudence," "*rechtsphilosophie*," and "*philosophie du droit*," a number of writers have undertaken to classify jurists according to their views of the nature of law or methods of approach to the science of law. Lord Bryce in his *Studies in history and jurisprudence*[61] tells us that four methods are commonly spoken of as employed in legal science, namely: the metaphysical or *a priori* method, the

[60] Aron, G. L'Enseignement du droit et la formation du citoyen. Paris, Boccard, 1920. 127 p.

[60a] Bonnecase, J. Qu' est ce qu' une faculté de droit. Paris, Sirey, 1929. 202 p.

[60b] Mestre, A. Études et étudiants. Paris, Dalloz, 1928. 160 p.

[61] Bryce, J. Studies in history and jurisprudence. New York, London, Oxford University Press, 1901. 2 v.

analytical method, the historical method, and the comparative method. Dean Pound in a series of articles in the Harvard Law Review [62] says that until recently it was possible to divide jurists into three principal groups which he calls the philosophical school, the historical school, and the analytical school. To these he would add a "rising and still formative school" which "may be styled the sociological school."

Of the three groups first named by Dean Pound, the philosophical school, which has as its characteristic the study of the philosophical and ethical bases of law, legal systems and doctrines, is the oldest. Having its origin in the metaphysical speculations of Greek philosophers, the philosophical method constituted the principal method of approach during the seventeenth and eighteenth centuries. Borrowing from antiquity a concept of *ius naturale*, the philosophers of this latter period appealed to natural law or the law of nature for their guiding principles in determining the ethical foundations of law. In the hands of the seventeenth and eighteenth century philosophers, however, natural law was divorced from theology. Instead of having a theological foundation its basis became a rational one. Grotius (1583–1645), to whom belongs the honor of reviving the concept of natural law and founding the modern philosophical method of jurisprudence, while not completely separating natural law from the will of God, in the first book of *De jure belli et pacis* describes it as supplying the rules which are suggested by reason and from which we necessarily determine whether particular action is just or unjust. The philosophical method of the first half of the last century was primarily metaphysical. Its adherents, usually using the philosophy of Kant, the outstanding founder of this school, as their starting point, investigated the abstract ideas of right and law in their relation to

[62] Scope and purpose of sociological jurisprudence. 24 Harvard Law Review 591; 25 Harvard Law Review 140, 489; The progress of the law: Analytical jurisprudence, 1914–1927. 41 Harvard Law Review 174. In this last article Dean Pound devotes considerable space to French legal philosophy, particularly with reference to Lévy-Ullmann's La définition du droit (*infra*, p. 47, note 12).

morality, freedom, and the human will. The metaphysical abstractions of this branch of the philosophical school fell an easy prey to its opponents and the philosophical method for a while was in disrepute. But as pointed out by Dean Pound in the series of articles already referred to, a reaction has set in, especially in France, where the philosophical method was never completely abandoned.

The long list of nineteenth century jurists who adopted the philosophical method is ample evidence of its continuous importance in French thought. The list, to mention only the more important names in chronological order, includes Lerminier, whose *Philosophie du droit*[63] was published in three editions between 1831 and 1853; Jouffroy, the author of *Cours de droit naturel*,[64] published in five editions between 1833 and 1876; Belime, whose *Philosophie du droit*[65] was published in four editions between 1843 and 1881; Oudot, whose works, *Premiers essais de philosophie du droit*[66] and *Conscience et science du devoir*[67] were published in 1846 and 1856; Franck, the author of *Philosophie du droit ecclésiastique*,[68] published in two editions, and of *Philosophie du droit civil*,[69] published in 1886; Renouvier, whose *Science de la morale*[70] appeared in first and second editions in 1869 and 1908; Boistel, the author of two works, the first, *Cours élémentaire de droit naturel*,[71] published in

[63] Lerminier, J. Philosophie du droit. 3. éd. Paris, Guillaumin, 1853. 535 p.

[64] Jouffroy, Th. Cours de droit naturel. 5. éd. Paris, Hachette, 1876. 2 v.

[65] Belime, W. Philosophie du droit, ou cours d'introduction à la science du droit. 4. éd. Paris, Durand, 1881. 2 v.

[66] Oudot, J. Premiers essais de philosophie du droit et d'enseignement méthodique des lois françaises. Paris, Joubert, 1846. 415 p.

[67] Oudot, J. Conscience et science du devoir, introduction à une explication nouvelle du Code Napoléon. Paris, Durand, 1856. 2 v.

[68] Franck, A. Philosophie du droit ecclésiastique. Paris, Germer-Baillière, 1864. 192 p.

[69] Franck, A. Philosophie du droit civil. Paris, Alcan, 1886. 295 p.

[70] Renouvier. Science de la morale. Nouv. éd. Paris, Alcan, 1908. 2 v.

[71] Boistel, A. Cours élémentaire de droit naturel ou de philosophie du droit, suivant les principes de Rosmini. Paris, Thorin, 1869. 461 p.

1869, and the second, *Cours de philosophie du droit*,[72] in 1899; Fouillée, whose most important work, *L'Idée moderne du droit*,[73] was first published in 1878; Rothe, the author of a philosophical treatise in six volumes, which was published under the title *Traité de droit naturel théorique et appliqué*[74] between 1885 and 1912; Lucien Brun, author of *l'Introduction â l'étude du droit*,[75] published in a second edition in 1887; Beaussire, author of *Les principes du droit*,[76] published in 1888; de Vareilles-Sommières, who published his *Les principes fondamentaux du droit*[77] in 1889, and Beudant, whose important work, *Le droit individuel et l'État*,[78] first appeared in 1891.

There was, however, during the course of the century an evolution in method of approach. The philosophy of the early period was impregnated with the idea that there exists over and above positive law an ideal system of law consisting of immutable principles which are discoverable through reason and to which positive law should conform. The authors of the Civil code were under the influence of the then prevailing transcendentalism when they proposed to inscribe at the head of the code the formula: "There is an universal law, immutable, the source of all positive laws." The works of the metaphysicians of the first half of the century were imbued with the same thought. Professor Jouffroy in his popular *Cours de droit naturel* speaks of natural law as having as its subject the rules of human conduct under all possible circumstances. Professor Oudot in his *Premiers essais* defined natural law as the collection of rules which it is desirable to see immediately transformed

[72] Boistel, A. Cours de philosophie du droit. Paris, Fontemoing, 1899. 2 v.

[73] Fouillée, A. L'idée moderne du droit. Nouv. éd. Paris, Hachette, 1923. 408 p.

[74] Rothe, T. Traité de droit naturel théorique et appliqué. Paris, Larose et Forcel, 1885–1912. 6 v.

[75] Brun, Lucien. Introduction à l'étude du droit. 2. éd. Paris, Lecoffre, 1887. 400 p.

[76] Beaussire, E. Les principes du droit. Paris, Alcan, 1888. 427 p.

[77] La Broüe de Vareilles-Sommières, G. Les principes fondamentaux du droit. Paris, Pichon, Guillaumin, 1889. 491 p.

[78] Beudant, C. Le droit individuel et l'État. Introduction à l'étude du droit. 3. éd. Paris, Rousseau, 1920. 290 p.

into positive laws. Even the more recent works of Professor Franck and de Vareilles-Sommières were inspired by the earlier concept of natural law.

But during the latter part of the nineteenth century the earlier metaphysical conception gave way, particularly in the hands of such writers as Fouillée, Boistel, and Beudant, to a concept of ideal justice supplying the principles which should direct man in his effort to perfect the social order. Opinions, however, differed as to the content which should be given this ideal.

The prevailing nineteenth century content as conceived by the natural law or philosophical school (which in France seem to be synonymous) was individualistic. Respect for human personality has always been important in French thought. Its principles were contained in the Declaration of the rights of man, and individual liberty also formed the background of the codes of the Napoleonic era. The abstractions of the metaphysicians, dealing as they did with the relations of right and law to morality and freedom of the human will, naturally led with some to definition in terms of the individual and a conception of fundamental subjective rights which are indispensable if man is to live in a manner that conforms to his nature and which, for that reason, should not be encroached upon. Lerminier, Renouvier, Franck, and Boistel dealt with a natural law defined in terms of respect for the individual. Beudant's *Le droit individuel et l'Etat* was written as a protest against the ever-growing encroachment of society on the individual. But not all of the French law-of-nature philosophers of the last century were necessarily individualists. Belime, Oudot, and Beaussire seem to have found duty rather than freedom to be the basis of law. Professor de Vareilles-Sommières along with Senator Lucien Brun looked upon natural law, derived from divine law, as supplying the principles underlying the maintenance of social order. Professor Fouillée, whose *L'idée moderne du droit* is translated in part in *Modern French legal philosophy*,[79] v. 7 of the *Modern*

[79] Modern French legal philosophy, by A. Fouillée, J. Charmont, L. Duguit, and R. Demogue. Tr. by Mrs. Franklin W. Scott and Joseph P. Chamberlain. Boston, The Boston book co., 1916. lxvi, 578 p.

legal philosophy series, identifies justice with liberty, but at the same time, under the influence of the prevailing positivist sociological doctrine, he assigns to law the dual purpose of promoting the interests of society and protecting the individual.

In France, as elsewhere on the Continent and in England, the early part of the nineteenth century saw a reaction against the traditional philosophical method. This reaction came from three well-defined groups which are usually designated under the terms the "historical school," the "analytical school," including the social-utilitarian school, and the "positivist-sociological school."

The historical school saw in law a product of time and unconscious evolution. Law is not made, but is the result of growth. German in origin, its chief connection with France as a school is Savigny's warning, in his celebrated *Of the vocation of our age for legislation and jurisprudence*,[80] against hasty codification along the lines of the French codes. Although the historical school has come in for considerable discussion in various works of French writers, usually critical, no outstanding French jurist can be strictly said to be included among its adherents. An article in the *Livre du centenaire*,[81] *Le Code civil et la méthode historique*, by Professor Saleilles, in which that learned and versatile writer attempts to show that, contrary to the predictions of Savigny, codification in France has not impeded the historical evolution of French law, might serve to identify him with the historical method, but Professor Saleilles, in his studies in criminology and comparative law, showed himself to be too catholic in his interests to be strictly identified with any school.

Anglo-American lawyers usually think of Austin in connection with the analytical method. If the analytical method is defined so as to include only an examination of existing legal data with a view to their classification and an explana-

[80] Savigny. Of the vocation of our age for legislation and jurisprudence, from the German by Abraham Hayward (from the 2d, 1828, ed.). London, Littlewood, 1831. 192 p.

[81] Le Code civil, 1804–1904; livre du centenaire, pub. par la Société d'études législatives. Paris, Rousseau, 1904. 2 v.

tion of their connotation and interrelation, one would naturally expect to find it employed more or less in France in treatises devoted to positive law as contained in the different codes. In this sense it is the method of Aubry and Rau in their classical work on the Civil code;[82] instead of following the order of the Code, the authors discuss the subject in monographic form scientifically classified. Professor Capitant, professor of civil law at the University of Paris, adopts this method, with a philosophical background, however, in his comparatively recent and extremely useful introductory work on civil law,[83] in which he discusses such subjects as subjective rights and their division, persons capable of enjoying rights, property, the acquisition and loss of rights and proof.

But the analytical jurist also looks upon law as something which is consciously made. Bentham, who is usually referred to as the founder of the analytical method, represented the English reaction against the metaphysical abstractions of continental philosophy and against the then current self-satisfaction of the English lawyer as typified by Blackstone's *Commentaries*. Not content with classification for its own sake, Bentham made the theory that law is a conscious creation serve as the basis for a doctrine that it should be made to promote a social utilitarian purpose. His utilitarianism, which was more a theory of legislation than a legal philosophy, has always had a certain attraction for French scholars, both because of French influence on Bentham during his youth and because of the fact that the utilitarian doctrine was followed in Engand by a liberal movement comparable with that which resulted on the Continent in the revolutionary movement of 1848. In his excellent study of Bentham and the evolution of the utilitarian doctrine Professor Halévy describes the parallel movement in the following language: "The philosophy of the rights of man led to the Revolution of 1848 on the Continent;

[82] Aubry et Rau. Cours de droit civil français, d'après la méthode de Zachariæ. 5. éd. Paris, Marchal et Godde, 1897–1922. 12 v.

[83] Capitant, H. Introduction à l'étude du droit civil. Notions générales. 4. éd. Paris, Pedone, 1922. 455 p.

utilitarianism in England, at about the same time, led to the triumph of the Manchester doctrine of free trade."[84] Nevertheless, the utilitarian doctrine remained essentially English in its subsequent development, as, essentially, it was English in origin.

Leaving aside the royalistic and theoretic doctrines of de Bonald, de Maistre, and Lamennais, which were political rather than juristic, the reaction in France against the classical philosophical method came from the positivist-sociological school which was founded by Auguste Comte and represented the predominant realistic element in French thought during the course of the last century. Due to their importance with respect to the realistic movement in France the doctrines of Comte[85] deserve more than passing notice.

According to Comte, every science passes through three stages. In the first, phenomena are explained as resulting from the supernatural; in the second, the supernatural gives way to a metaphysical explanation; and in the third, their explanation is founded on observation with the formulation of rules or laws based upon experimentation and induction. Carrying his theory a step further, he concluded that juridical and political thought had already passed through the second stage and that the time had come to adopt a truly scientific method based upon an experimental study of social facts. Rejecting the traditions of the classical school along with natural law individualism, he says that positivism only recognizes duties since its objective, being social, can not be reconciled with a concept of right based on the claim of the individual. As a result, law, instead of being limited by *a priori* necessary respect for the individual, is a means of intervention on the part of society in its own interest, and for its own protection. Time can not be taken to refer to all the nineteenth century French philosophers who were influenced more or less by the sociological methods of the Comtian positivist school. A complete list would include names of philosophers whose methods range all the

[84] Halévy, E. La formation du radicalisme philosophique. Paris, Alcan, 1901–1904. 3 v. The quotation is from v. 1, p. 37.

[85] Comte, A. Cours de philosophie positive. 2. éd. Paris, Baillère et fils, 1864. 6 v.

way from out and out positivism to rationalism as well as a number of sociologists and economists whose works do not fall within the scope of this discussion. The more important names include Littré, Richard, Courcelle-Seneuil, Tanon, and Durkheim.

Littré's *Application de la philosophie positive au gouvernement des sociétés*,[86] published in 1849, like Comte's *Cours de philosophie positive*, is devoted to a scientific study of the organization of humanity. Also, like Comte, he rejects individualism as unscientific and even goes so far as to express a willingness to confide the direction of society to the more intelligent class. Gaston Richard's *L'origine de l'idée du droit*,[87] published in 1892 as a doctor's thesis, is an ingenious but not always convincing study of intervention by society in its own interests. Calling to his aid resources drawn from a scientific study of comparative law, the learned writer bases social intervention through law on the interest of society in its own preservation from the consequences of conflicts between individual activities, appetites, and desires. It is the intervention of society to preserve social order which has given rise to such institutions as the family, marriage, property, and contract. A right instead of preceding a wrong is created by society as a means of preserving the social order. Professor Courcelle-Seneuil in his two more important works, *Études sur la science sociale*[88] and *Préparation à l'étude du droit*,[89] seems to have been inspired in part by Bentham's utilitarianism, Spencer's individualism, and Comte's positivism. Utilitarian and at the same time individualistic, even to a certain extent idealistic, he also derives his concept of law from a study of the social sciences. Rejecting the idealistic concept of justice of the

[86] Littrè, E. Application de la philosophie positive au gouvernement des sociétés. Paris, Ladrange, 1849. vii, 159 p.

[87] Richard, G. Essai sur l'origine de l'idée du droit. Paris, Thorin, 1892. xxiii, 263 p.

[88] Courcelle-Seneuil, J. G. Études sur la science sociale. Paris, Guillaumin, 1862. 492 p.

[89] Courcelle-Seneuil, J. G. Préparation à l'étude du droit, étude des principes. Paris, Guillaumin, 1887. xi, 489 p.

classical school, he finds law to be a collection of rules founded on utility and having their source in the state. Tanon, who was influenced both by historical and positivist doctrines, in his study of law and the evolution of the social conscience,[90] assigned as the purpose of law the designation of obligatory relations between men which are imposed by the ideas of justice existing in the common conscience of a social group at a given moment.

Standing alone, the sociological school in supplying a scientific approach to the problems of legal philosophy would be important enough as an historical factor in the evolution of French juristic thought. But a greater importance lies in the fact that it contributed the doctrine of social solidarity to the cross currents of present day French legal thought. Professor Durkheim's work, *Division du travail*,[91] is of particular importance in connection with the doctrine, not only because he is one of the precursors of the modern movement but also because his ideas were freely drawn from by the present outstanding French realist, Professor Duguit. An advocate, primarily as a sociologist and moralist and not as a lawyer, of the integration of social science in the general system of natural sciences, Professor Durkheim found social solidarity to be the outstanding vital social phenomenon and the only basis for law and morality. In considering the forces which bring men together into a society Professor Durkheim names two contributing causes—solidarity through similarity of desires and interests, which he calls mechanical solidarity, and solidarity through independent functions. In the beginning, in primitive society, men were drawn together through the similarity of their needs, desires, and beliefs, but as society advances, their desires and needs, as well as aptitudes, become more and more diverse. As a result men are held together through the facility for exchange of services to satisfy their individual desires and needs. This cohesion through

[90] Tanon, L. L'évolution du droit et la conscience sociale. 3. éd. Paris, Alcan, 1911. 166 p.

[91] Durkheim, E. De la division du travail social. Paris, 1893. 471 p. 5. éd. Paris, Alcan, 1925. 416 p.

satisfaction of differing needs he calls solidarity through division of labor. It is worthy of remark that the bond of union or social interdependence through independent functions instead of destroying the individual is assumed to bring about his development through increased activity as a means of satisfying his desires. Michel, in his important work, *L'idée de l'État*,[92] develops the same idea from another point of view when he says that true individualism does not isolate the individual but conceives of him as a member of society developing along with the group.

The solidarist doctrine has received extensive discussion at the hands of French philosophers, sociologists, and economists. The more important works not yet mentioned include Gide's *L'idée de solidarité*[93] and Bouglés' *Le solidarisme*.[94] Mention shodld also be made of *Solidarité*,[95] by Léon Bourgeois, who as a political leader made the doctrine the basis of a program of a political party. In the hands of others it became the basis of a legal philosophy, sometimes as a social fact to be accepted, and to which law must conform, at others as an ideal which law should promote.

The present century began with a number of legal problems to be solved. The centenary of the Civil code brought to the front the question of revision. As might be expected, a century-old code, little changed by legislation, must, in order to apply to changed conditions, be either revised or be given a new content through interpretation. Thus arose an important question of method of interpretation. Also, during the hundred years since the codification of the Napoleonic era, changed social and economic

[92] Michel, H. L'idée de l'État; essai critique sur l'histoire des théories sociales et politiques en France depuis la révolution. 3. éd., rev. Paris, Hachette, 1898. 659 p.

[93] Gide, Ch. L'idée de solidarité en tant que programme économique (Extrait Revue internationale de sociologie). Paris, Giard et Brière, 1893. 16 p.

[94] Bouglé, C. Le solidarisme. 2. éd. Paris, Giard, 1924. 208 p.

[95] Bourgeois, L. Solidarité. (Solidarité. Justice. Liberté. L'idée de solidarité et ses conséquences sociales.) 10. éd. Paris, Colin, 1925. 294 p.

conditions raised important questions of the direction to be followed in social legislation, in which France had lagged behind her more advanced neighbors. Separation of church and state also raised important questions. It is not surprising, therefore, in view of these problems, to find French scholars in increasing numbers devoting their attention to the foundations and purposes of law. The more important works of the pre-war period are those of Duguit, Demogue, Gény, and Charmont.

Inasmuch as his theories are the ones around which most of the discussions in leading French philosophical works center, it might be well first to turn our attention to Professor Duguit. Professor of constitutional law at the University of Bordeaux and a prolific writer, he has produced a number of works on public law in its philosophical aspects. The most comprehensive exposition of his doctrines is contained in his *L'État, le droit objectif et la loi positive* which forms the first volume of *Études de droit public.*[96] They were further elaborated in a series of lectures which were published under the title *Le droit social, le droit individuel et les transformations de l'État.*[97] But all of his writing has a philosophical background, and if one were to give a complete list of his philosophical works it would be necessary to include his *Manuel de droit constitutionnel,*[98] *Traité de droit constitutionnel,*[99] *Les transformations générales du droit privé,*[1] and *Les transformations du droit public,*[2] translated into English by Harold and Frida Laski

[96] Duguit, L. Études de droit public. I. L'État, le droit objectif et la loi positive. II. L'État, les gouvernants et les agents. Paris, Fontemoing, 1901–02. 2 v.

[97] Duguit, L. Le droit social et le droit individuel et les transformations de l'état. 3. éd. Paris, Alcan, 1922. 160 p.

[98] Duguit, L. Manuel de droit constitutionnel. 4. éd. Paris, de Boccard, 1923. 605 p.

[99] Duguit, L. Traité de droit constitutionnel. Paris, de Boccard. 1921–25. 5 v.

[1] Duguit, L. Les transformations générales du droit privé depuis le Code Napoléon. 2. éd. Paris, Alcan, 1920. 2 p. l., xiv, 206 p.

[2] Duguit, L. Les transformations du droit public. Paris, Colin, 1921. 285 p. Reprint.

under the title *Law in the modern state.*[3] The last two works give an interesting exposition of the changing views of the concept of law, from the individualistic notions of the time of the compilation of the codes to the social ideas of present times. Duguit is also the author of a treatise, *The law and the state*, which appeared as a whole number of the Harvard Law Review (v. 31, p. 1) and portions of his *L'État, le droit objectif et la loi positif* have been translated and appear in *Modern French legal philosophy* (*supra*). His objective theory of law is developed in a series of articles in the Columbia Law Review (v. 20, p. 817; v. 21, pp. 17, 126, and 242).

Rejecting the classical concept of subjective individual rights as being based on a pure hypothesis and metaphysical affirmation, Professor Duguit adopts what he calls an objective theory of law. Like Durkheim he bases social conduct on solidarity, but unlike many other solidarists he refuses to give solidarity a moral value. His philosophy might be summed up as having as its basis a duty to do nothing to diminish social solidarity; to do everything possible for its promotion. At times he seems to be making solidarity an ideal which law should promote, but he aligns himself with the realists when he says that his rule of conduct for man to follow is not a rule of morals but a rule of law. Man should cooperate to promote social solidarity not because such cooperation is good in itself but because such cooperation has a social value. As a realist, however, he is not a believer in the omnipotence of the state. On the contrary, he considers the state like the individual to be bound by the limits placed on it by his doctrine of social interdependence. In thus limiting the state, Duguit, in spite of his profession of realism, sets up an external standard which an ideal system is supposed to produce. To quote from Professor Borchard (*Governmental responsibility in tort* VI (*The State subject to law*), 36 Yale Law Journal, p. 1039 at p. 1091; see also *Governmental responsibility in*

[3] Duguit, L. Law in the modern State, tr. by Frida and Harold Laski. New York, B. W. Huebsch, 1919. 247 p.

tort v (*The State can not be bound by law*), 36 Yale Law Journal, p. 757 at p. 763): "'Objective law,' 'social solidarity' . . . like 'natural law' . . . are value standards which embody an implicit dogmatism transcending experience and expressing both an ideal, and the quest for, and supposed need of, perfection and the absolute." In addition to the exposition and criticism of Duguit's theories in the article just referred to there are several other expositions and interpretations, in English. These include Mathews', *A recent development in political theory* (24 Political Science Quarterly, 284), Elliott's *The metaphysics of Duguit's pragmatic conception of law* (37 Political Science Quarterly, 639), Brown's *The jurisprudence of M. Duguit* (32 Law Quarterly Review, 168), and Coker's *Pluralistic theories* in Merriam and Barnes' *A history of political theories*, chapter 3.

The reputation of Professor Demogue, formerly professor at Lille and now a member of the law faculty of the University of Paris, lies primarily in the field of civil law, particularly obligations. His important work in the field of legal philosophy is his *Les notions fondamentales du droit privé*,[4] which was written to serve as an introduction to a study of obligations. The first part, which is devoted to a study of fundamental notions of law, appears in *Modern French legal philosophy* (*supra*, p. 3). In accepting a notion of natural law, providing it can be divorced from its eighteenth century abstractions and treated as something with changing content to be striven for, he aligns himself with the idealists. But his ideal is of uncertain quality. Neither an individualist nor a solidarist, he seems to be a somewhat detached advocate of reconciliation of conflicting criteria which have their origin in differing feelings and tastes as to the importance of needs which law should secure. Law should have as its purpose "the satisfaction of human tastes; the realization of varied conceptions of life."

[4] Demogue, R. Les notions fondamentales du droit privé; essai critique, pour servir d'introduction à l'étude des obligations. Paris, Rousseau, 1911. 681 p.

In his *Méthode d'interprétation en droit privé positif*,[5] which appears in part in *Science of legal method*,[6] v. 9 of the *Modern legal philosophy series*, Professor Gény, of the University of Nancy, was primarily interested in developing a method of interpretation of the Civil code. Protesting against the traditional method of attempting through logical deductions to make the written law all sufficient, he advocated that where the written law is not expressly applicable to a given situation the interpreters have recourse to the dictates of reason, to sciences auxiliary to the law and to facts derived from an observation of society, in order to supplement its deficiencies. In a more recent and more extensive work, *Science et technique en droit privé positif*,[7] he elaborates his earlier ideas of the fundamental notions of law. After discussing at length current philosophical thought, as well as that of the nineteenth century, he aligns himself with the school of natural law and rejects the realism of Professor Duguit.

Professor Charmont, of Montpellier, in his excellent piece of work, *La renaissance du droit naturel*,[8] which is translated in part in *Modern French legal philosophy* (*supra*), turned his attention to the philosophical methods employed, particularly in France, down to the present time. After reviewing the different schools and discussing the revival of natural law or the philosophical method, he comes to the conclusion that it is impossible to justify a notion of law deprived of its moral content. But his natural law, like that of Boistel and Beudant, is something different from that of the early part of the nineteenth century. Having lost its absolute character it has a variable content. Recog-

[5] Gény, F. Méthode d'interprétation et sources en droit privé positif. Essai critique. 2. éd. rev. et mise au courant. Paris, Pichon et Durand-Auzias, 1919. 2 v.

[6] Science of legal method. Select essays by various authors. Tr. by Ernest Bruncken and Layton B. Register. Boston, Boston book co., 1917. 593 p.

[7] Gény, F. Science et technique en droit privé positif; nouvelle contribution à la critique de la méthode juridique. Paris, Recueil Sirey, 1914–24. 4 v.

[8] Charmont, J. La renaissance du droit naturel. 2. éd. Paris, Duchemin, 1927. 222 p.

nizing the idea of evolution and utility it takes into account both the individual and society, thus tending to bring together individual conscience and the law instead of setting them off against each other. Professor Charmont's works are few in number, the only others of a philosophical nature being his *Le droit et l'esprit démocratique.*[9] which appeared in 1908, and *Les transformations du droit civil*, published in 1912.[10]

In connection with Professor Charmont's works attention should be called to a somewhat similar study, *La crise actuelle de la philosophie du droit*,[11] by Professor Ehrhardt, of the Paris faculty of theology. Reference should also be made to an article by Professor Saleilles, *École historique et droit naturel*, in the first volume of the *Revue trimestrielle* (1902, p. 80), in which the learned author discusses the revival of natural law.

In his important *Élements d'introduction générale*,[12] written in 1917, Professor Lévy-Ullmann, then of the University of Lille, after reviewing the different definitions of law which have been current in France, says that it is a historical fact that after passing through a crisis a nation reexamines its notion of law. Judging from the philosophical works and articles in periodicals which have been published in France during the last few years, the statement of Professor Lévy-Ullmann has been substantiated. It is undoubtedly too early to predict what definite form the philosophy or philosophies arising out of these discussions will take. There are, however, certain defined characteristics. Most of the works examine the philosophies of the past, taking stock of the ground already covered. Ultimately discussions center on the realism of Professor Duguit, which many writers find to be insufficient. Like Professor Charmont, they refuse to divorce law from its moral content but

[9] Charmont, J. Le droit et l'esprit démocratique. Paris, Masson; Montpellier, Coulet, 1908. 243 p.

[10] Charmont, J. Les transformations du droit civil. Paris, Colin, 1912. 294 p.

[11] Ehrhardt, E. La notion du droit et le christianisme. Introduction historique: I. La crise actuelle de la philosophie du droit. Paris, Fischbacher, 1908. 182 p.

[12] Lévy-Ullmann, H. Éléments d'introduction générale à l'étude des sciences juridiques. I: La définition du droit. Paris, Recueil Sirey, 1917. 176 p.

set off against positive law a concept of natural law, not the concept of the metaphysicians but the latter-day concept of a small group of guiding principles. Perhaps these principles could all be comprised under the heading "ideal social justice," or, even, what we call "due process of law."

Among the recent works refusing to divorce law from morality should be included those of Cuche, Bonnecase, and Renard, as well as that of Gény, already mentioned. Professor Bonnecase, of Bordeaux, gives an excellent short study of the notion of law during the last century in his *La notion de droit en France*[13] and at the end bases natural law on a metaphysical concept. Other important recent works by the same author include a recent pamphlet *A la recherche du fondement du droit*,[13a] his *Introduction à l'étude du droit*,[14] published in 1926, and his *Science du droit et romantisme*,[15] dealing with the conflict of legal conceptions in France from 1880 up to the present. Professor Cuche, of Grenoble, in a somewhat short work, *En lisant les juristes philosophes*,[16] lays the foundation of law on Christianity and faith. Professor Cuche is also the author of another work, published under the title *Conférences de philosophie de droit*,[17] dealing with the "mirage of natural law," the metaphysical postulates of positivism and legal personality. Professor Renard in a series of works[18] appearing be-

[13] Bonnecase, J. La notion de droit en France au dix-neuvième siècle. Contribution à l'étude de la philosophie du droit contemporaine. Paris, de Boccard, 1919. 236 p.

[13a] Bonnecase, J. A la recherche du fondement du droit. Paris, Suey, 1929. 23 p.

[14] Bonnecase, J. Introduction à l'étude du droit. Le problème du droit devant la philosophie, la science et la morale. Paris, Recueil Sirey, 1926. 164 p.

[15] Bonnecase, J. Science du droit et romantisme. Paris, Recueil Sirey, 1928. lv, 745 p.

[16] Cuche, P. En lisant les juristes philosophes. Paris, de Gigord, 1919. 122 p.

[17] Cuche, P. Conférences de philosophie de droit. Paris, Dalloz, 1928. 128 p.

[18] Renard, G. De droit, la justice et la volonté; conférences d'introduction philosophique à l'étude du droit. Paris, L. Tenin, 1924. 344 p.

Same. Le droit, la logique et le bon sens. 1925. 408 p.

Same. Le droit, l'ordre et la raison. 1927. 433 p.

Same. La valeur de la loi. Critique philosophie de la notion de la loi. 1928. 298 p.

tween 1924 and 1928 accepts as the basis of positive law an "immutable natural law" consisting of a small number of principles founded on morality. Mention should also be made of a number of articles by Professor Le Fur [19] of Paris in which he advocates the application of the same notion to international law. While the preponderance of idealism may be recognizable, its content is not yet definable. Perhaps Professor Cuche expresses a tendency toward conciliation of individualism and collectivism when he says that present changes in the notion of the basis of law tend toward an abandonment of the negative and prohibitive individualistic functions of classical juristic thought in favor of cooperation toward social and individual ends.

Not all present French thought is idealistic, however. Professor Duguit has repeated and added to his ideas in the new edition of his *Traité de droit constitutionnel*,[20] in five volumes, all of which have appeared since the war. In the concluding pages of a little book, *Le droit, l'idéalisme et l'expérience*,[21] published in 1922 by Professor Davy, of the faculty of letters of the University of Dijon, the author, after reviewing the views of Professors Duguit and Gény, summarizes the relation of realism to idealism in language which is well worth referring to. Respect for personality, for justice, for promises made, are not so much beautiful innate instincts as difficult and slow conquests made by society in its struggle against itself. Realism is not a denial of idealism, but it alone is capable of furnishing an experimental justification of *a priori* values.

[19] Professor Le Fur's articles, to mention only a few, include: Le droit naturel et le droit rationnel ou scientifique (Revue de droit international, 1927, p. 658–698); Le droit naturel ou objectif s'étend il aux rapports internationaux (La Revue de droit international et de Legislation comparée, 1925, p. 59–99); Philosophie du droit international (Revue général de droit International public, 1921, p. 565–603). They have been published in reprints by the periodicals named.

[20] *Op. cit.* p. 43, note 99, *supra.*

[21] Davy, G. Le droit, l'idéalisme et l'expérience. Paris, Alcan, 1922. 165 p.

COMPARATIVE LAW

In connection with the discussion of legal philosophy some reference should be made to the study of comparative law in France. Doctor Alvarez devotes a few pages to the subject in his *Une nouvelle conception des études juridiques*,[22] which is translated in part in the *Science of legal method*,[23] v. 9, of the *Modern legal philosophy series*. Professors Lambert and Saleilles are among the French writers who have taken a prominent part in developing the comparative method. A recent work by Professor Lambert, *L'enseignement du droit comparé*,[24] should be of interest to Americans, as it deals with a *rapprochement* of French and Anglo-American law through a study of comparative law. He is the author of another work, *Études de droit commun*,[25] translated in part in *Science of legal methods* (*supra*). Professor Saleilles was the author of a number of studies in German law which will be referred to in the chapter on the Civil code. In 1900 he contributed an important study of methods of comparative law to the International Congress of Comparative Law which was published in the *Bulletin de la Société de législation comparée* of the same year. It should be remarked here that this bulletin, the organ of the *Société de législation comparée*, was founded in 1869 and appears monthly. The same organization publishes the *Annuaire de législation comparée*, which was begun in 1872, and contains the texts of the principal laws voted during a year in countries other than France. On the occasion of the fiftieth anniversary of the society it published a collection of articles relating to

[22] Alvarez, A. Une nouvelle conception des études juridiques et de la codification du droit civil. Paris, Pichon et Durand-Auzias, 1904. 234 p.

[23] Science of legal method. Select essays by various authors. Tr. by Ernest Bruncken and Layton B. Register. Boston, The Boston book co., 1917. 593 p.

[24] Lambert, E. L'enseignement du droit comparé. Sa coopération au rapprochement entre la jurisprudence française et la jurisprudence angloaméricaine. Lyon, Rey; Paris, Rousseau, 1919. 118 p.

[25] Lambert, E. Études de droit commun législatif ou de droit civil comparé. Paris, Giard et Brière, 1903. 927 p.

the changes in the law during the preceding 50 years in the principal countries of Europe and America.[26]

LEGAL HISTORY

The study of the evolution of French law from the time of the Roman conquest of Gaul to the promulgation of the different codes in the early part of the last century presents a fertile field to the legal historian. Historical sources are not lacking and sufficient evidence of the legal institutions of the various periods remains to permit reconstruction of the law in force. While the sum total of their works is not extremely large, French scholars can not be said to have been delinquent in making use of the material at hand. On the contrary, the results of their research have contributed much to the general fund of historical knowledge. Perhaps the best estimate of the value of their contributions is that of Dean Wigmore, who, in an introductory preface to the third volume of the *Continental legal history series*,[27] says: "It is indeed to be regretted that in this, as in other fields, the repute of German studies in the past generation has caused many of us to forget the at least equal merits of French scholarship; not less thorough in standards nor less broad in scope, it is generally more compact in method and more clear in style." But before going into a discussion of the works of the more important historians some preliminary reference to historical sources and the evolution of the French legal system to the end of the *ancien régime* in 1789 may be of value.

Gallo-Roman Period

Roman Law

After the Roman occupation of Gaul, the Celtic and German inhabitants seem to have been rapidly assimilated to the Roman régime. French historians generally make no attempt to describe the legal system prior thereto but pass on to the Gallo-Roman period, during which the law in

[26] Les transformations du droit dans les principaux pays depuis cinquante ans. 1869–1919. Paris, Librairie générale de droit et de jurisprudence, 1922–23. 2 v.

[27] For a discussion of the Continental legal history series see p. 3. The quotation from Dean Wigmore may be found at p. xxviii, v. 3.

force was, in the main, that common to the rest of the Roman Empire. The historical sources of the period are necessarily the same as those of the Roman law of the time and are to be found in the various editions of the Roman texts. For the surviving fragments of the codes, such as the unofficial Gregorian and Hermogenian codes and the official Theodosian Code, recourse must be had to the editions of German scholars, notably those of Haenel [28] and Mommsen,[29] but the works of the important Roman jurisconsults, such as the *Commentarii* of Gaius, the *Sententiæ* of Paul, and the *Regulæ* of Ulpian, are contained in an outstanding French edition by Professor Girard.[30]

As might be expected, the close association of Roman law with the early history of French law and the later reception of Justinian as the basic law in that portion of France designated as *pays de droit écrit* have made the study of Roman law a subject of peculiar interest to French scholars, who have produced a number of general works of importance. While not especially devoted to Roman law as a part of historical sources of early French law, they may be said to be secondary sources of Roman law as applied in Gaul and later in France at different stages of the evolution of French legal institutions.

The outstanding French work on Roman law is that of Girard, formerly professor of Roman law at the Paris Law School, published in its eighth edition in 1929 under the title *Manuel élémentaire de droit romain.*[31] The seventh edition, which was published after Girard's death, is without an index, and is in part uncorrected. The eighth edition is revised and augmented by Felix Senn, of the Faculty of law of the University of Nancy. A portion of an earlier

[28] Haenel. Codices Gregorianus, Hermogenianus, Theodosianus. Bonn, Marcum, 1842. Supplementum, 1844. 2 v. in 1.

[29] Mommsen et Meyer. Theodosiani libri xvi cum Constitvtionibvs Sirmondianis et Leges novellæ ad Theodosianvm pertinentes. Berlin, Weidmann, 1905. 3 v.

[30] Girard, P. F. Textes de droit romain. 5. éd. Paris, Rousseau, 1923. 928 p.

[31] Girard, P. F. Manuel élémentaire de droit romain. 8. éd. Paris, Rousseau, 1929. 16, 1223 p.

edition of Professor Girard's work was translated into English and published in 1906 under the title *A short history of Roman law*.[32] A further important contribution by the same eminent authority is his *Mélanges de droit romain*,[33] the first volume of which deals with historical sources and the second with the historical development of a number of substantive and procedural institutions. Another valuable one-volume work is that of Professor Cuq, also of the Paris faculty, *Manuel des institutions juridique des Romains*.[34] Professor Cuq is also the author of a larger work devoted to the development of Roman legal institutions. The second volume of this latter work, *Les institutions juridiques des Romains*,[35] contains an excellent account of classical Roman law and the law of the Western Empire. In addition attention should be called to a valuable historical study of the law of Justinian, *Études historiques sur le droit de Justinien*,[36] which was published by Professor Collinet and was crowned by the Academy.

Before leaving the literature dealing with Roman law some reference should be made to a number of more elementary but valuable student texts. Professor Bry, formerly dean of the law faculty of the University of Aix-Marseilles, was the author of a very good text, *Principes de droit romain*,[37] which was recently revised and published in its sixth edition by his son Joseph Bry. The popularity of the *Traite élémentaire*,[38] by Professor Petit, and *Éléments*

[32] Girard, P. F. A short history of Roman law. Tr. by Augustus H. F. Lefroy. Toronto, Canadian Law Book Company, 1906. 220 p.

[33] Girard, P. F. Mélanges de droit romain. Paris, Recueil Sirey, 1912–23. 2 v.

[34] Cuq, E. Manuel des institutions juridiques des Romains. Paris, Plon-Nourrit et cie., 1917. 938 p.

[35] Cuq, E. Les institutions juridiques des Romains. Paris, Librairie Plon, 1904–08. 2 v.

[36] Collinet, P. Études historiques sur le droit de Justinien. Paris, Larose & Tenin, 1912–25. 2 v.

[37] Bry, G., et Bry, J. Principes de droit romain exposés dans leur développement historique. 6. éd. Paris, Recueil Sirey, 1927. 408 p.

[38] Petit, E. Traité élémentaire de droit romain. 9. éd. Paris, Rousseau, 1925. 804 p.

de droit romain,[39] by Professor May, is attested to by the fact that they have been recently published, respectively, in their ninth and seventeenth editions. Professor May's work has the reputation of being particularly clear. The list of student manuals was added to by the recent appearance of the *Cours élémentaire de droit romain*[40] which represents, originally, the work of the late Professor Huvelin, of Lyon, but was published under the direction of Professor Monier.

Frankish Period

With the Germanic invasions of the fifth century and the fall of the Western Roman Empire in 476, the legal system of Gaul entered a new phase. Law became personal, each racial element being governed by its own laws. The principal Germanic tribes occupying the province—Burgundians, Visigoths, and Franks—brought with them their own customary laws, but at the same time they left to the Gallo-Roman inhabitants the enjoyment of those already in force. Even after the establishment of the Frankish Empire the various German races continued for a time to be governed by their respective codes. While German law replaced Roman law as the predominant element, under the theory of personality of law, the latter was conserved. Additional factors began to make themselves felt. Canon law became important, and with the establishment of the Frankish Empire the legislation of the Frankish princes became a part of the legal order. Due to the ultimate supremacy of the Franks, this second period is generally referred to by French historians as the Frankish period.

The principal historical sources are the compilations of the so-called barbarian laws, *leges barbarorum*, or folk law. Of these the Salic law of the Franks or *Lex salica* is the most important. The Franks had no special code for their Gallo-Roman subjects, but the Burgundians and Visigoths, in addition to legislating for their own peoples, compiled codes of Roman law. All of these various compilations are contained in different modern editions which represent the

[39] May G. Éléments de droit romain à l'usage de étudiants des facultés des droit. 17. éd. Paris, Recueil Sirey, 1927. 753 p.

[40] Huvelin, P. Cours élémentaire de droit romain. Paris, Recueil Sirey, 1927. 761 p.

painstaking work of German historical scholars as well as, in part, that of French and English.

There are a number of modern editions of the *Lex salica.* A good French edition is that of Pardessus, published by the French Government in 1843.[41] Perhaps the best German edition is that of Behrend.[42] In addition, we have an excellent English edition by Hessels and Kern.[43] A new critical edition is now said to be in the course of preparation for the *Monumenta Germaniae historica.* The *Lex romana Burgundionum,* or as it is sometimes erroneously called, Papian, appears in the *Monumenta Germaniae historica* in two editions, one by Professor Bluhme, of 1862,[44] and another by Professor Von Salis, of 1892.[45] The same collection also contains two editions of the Burgundian Code, or, as it is sometimes called in French, *Loi Gombette.* Both editions represent the work of Bluhme and Von Salis.[46] Attention should be called to a new manuscript which received careful study on the part of Professor Petot in the *Nouvelle revue historique de droit* in 1913 (pp. 337–375). Professor Zeumer's edition of the *Leges Visigothorum*[47] also appears in the *Monumenta Germaniae historica* and the *Lex romana Visigothorum* or Breviary of Alaric is contained in an excellent edition by Haenel.[48]

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[41] Pardessus, J. M. Loi salique ou recueil contenant les anciennes rédactions de cette loi et le texte connu sous le nom de lex emendata avec des notes et des dissertations. Paris, Imprimerie royale, 1843. lxxx, 740 p.

[42] Behrend, F. J. Lex salica. 2. aufl. von R. Behrend. Weimar, H. Bohlaus, 1897. 236 p.

[43] Hessels, J. H., and Kern, H. Lex salica; the ten texts with the glosses, and the Lex emendata. London, J. Murray, 1880. 692 col. on 252 p.

[44] Monvmenta Germaniae historica. Berlin, Wiedmann, 1826–1920; Bluhme, Lex romana Burgundionum, Leges, v. III, 1863, p. 579–624.

[45] *Op. cit.* note 44. Von Salis, Lex romana Burgundionum, Leges, pars. I, v. II, sect. I, 1892, p. 29–116.

[46] *Op. cit.* note 44. Bluhme, Lex Gundobada, Leges, v. III, 1863, p. 497–578. von Salis, Lex Gundobada, Leges, sect. I, v. II, pars. I, 1892.

[47] *Op. cit.* note 44. Zeumer, K. Leges Visigothorum, Leges, sect. I, v. I, 1902.

[48] Haenel, G. Lex romana Visigothorum. Lipsiæ, Teubner, 1849. 468 p.

The Capitularies, or legislation of the Frankish kings, were first edited in 1677 by Baluze, Colbert's librarian. In 1780 this edition was revised and added to by Pierre de Chiniac, who, considering the time at which it was done, did an excellent piece of work.[49] Two new editions appear in the *Monumenta Germaniae historica.* Of these that of Boretius and Krause is considered by French historians to be much the better and is the one which is usually cited.[50]

Feudal Period

The disintegration of the Frankish Empire was followed by feudalism, which, unlike its English counterpart, had but little effect on the private law, as it ultimately appeared in the various codes; but, besides having an important bearing on the history of public law, the feudal period, lasting from the tenth to the sixteenth century, was also marked by events which played an important part in the evolution of the modern law. Probably as early as the ninth century the theory of personality of law began to give way to that of territoriality, the change becoming complete in the course of the tenth century. Unfortunately this change did not bring about uniformity. On the contrary, different communities followed different customary laws, so that from a diversity growing out of a difference of racial laws the transition was one to a diversity growing out of a difference of territorial laws. In the north the Frankish population was in the majority, and Roman law, rarely applied, became less important. On the other hand, in the section of France generally designated as the Midi, the Gallo-Roman population was more numerous, and Roman law, more frequently applied, became the predominant basis of the customary law. In the beginning the Roman law of the Midi was that of the Theodosian Code conserved in the compilations of the Visigoths and Burgundians. However, the eleventh century saw the renaissance of the study of Roman law at Bologna, a renaissance which in spite of opposition spread to all Europe and eventually brought about the sub-

Regional Customs

[49] Baluze. Capitularia regum Francorum. Paris, 1677. 2 v. Nova ed. Curante P. de Chiniac. Parisiis, F. A. Quillau, 1780. 2 v.

[50] *Op. cit.* note 44. Boretus, Leges, sect. II, v. I, 1881–83; Krause, v. II, 1890–97. This edition was begun by Boretius and completed by Krause.

stitution in France of Justinian, not only as the basic law of the Midi but also as the secondary source in the north. Probably by the end of the thirteenth century the Roman law of Justinian and *droit écrit*, the term applied to the law of the Midi, had become synonymous. The general division of France into sections, one called *pays de droit écrit* and the other *pays de droit coutumier*, with further subdivisions resulting from local custom, continued until the promulgation of the codes.

A discussion of Roman law and regional customs appears in Vol. I, pp. 203–250, of the *Continental legal history series.*

However tempting it might be to linger over the works of the glossators and their successors, as well as the principal works of the Middle Ages on canon law, it is necessary to pass on to the more important historical sources of the period, the *Coutumiers.* The customary laws of the different parts of France were not officially compiled until the sixteenth century, but as early as the beginning of the thirteenth a number of books on customary law, called *Coutumiers*, made their appearance as the works of the first French jurisconsults, who occupy in French legal history much the same position as Bracton in the early history of English law. The first to appear was the *Très ancien coutumier de Normandie* (between 1194 and 1204) which exists to-day in two forms, one French and the other Latin. Chronologically it was followed between 1254 and 1258 by the *Grand coutumier de Normandie*, the landmark of Norman law and still the basis of the existing legal system in the Isle of Jersey. Another outstanding *Coutumier* of the same century is *Les coutumes de Beœuvoisis*, the work of Beaumanoir, who in addition to being an authority on legal matters seems to have been an individual of catholic tastes. Of other works of the time mention may be made of *Conseil a un ami*, *Livre de jostice et de plet* and the *Établissements de Saint Louis.*

Coutumiers

Beginning with the fourteenth century, private works on customary law became numerous, the local laws of practically all of France having become the subject matter of one or more *Coutumiers.* Of those which followed, lack of space

makes it impossible to mention more than two of the more important, the *Très ancienne coutume de Bretagne* and the *Grand coutumier de France*, or as it is sometimes called, the *Grand coutumier de Charles* VI.

The various coutumiers which have just been referred to are contained in modern editions which display a high type of French legal research. Both *Coutumiers* on Norman law are contained in an excellent work by Professor Tardif which gives ample introductions to the different texts.[51] There is also a very good edition of the *Grand coutumier* by Laurence de Gruchy, of the Isle of Jersey.[52] The best edition of the *Coutumes de Beauvaisis* of Philippe de Remi, is that edited by Salmon.[53] *Conseil à un ami* was edited in 1846 by Marnier under the title *Le conseil de Pierre de Fontaines*[54] and the *Livres de jostice et de plet* by Rapetti in 1850.[55] Professor Viollet published an outstanding critical edition of the *Établissements de Saint Louis* in 1881–1886,[56] the text being preceded by an introduction of 480 pages containing a thorough study of the sources, the contents, and influence of the *Coutumiers* as well as a study of the different texts. The *Très ancienne coutume de Bretagne* is contained in an edition by Professor Planiol,[57] and the *Grand coutumier de France*[58] was edited in 1868 by Laboulay and Dareste. Unfortunately

[51] Tardif, J. Coutumiers de Normandie. Paris, Picard, 1887–96. 2 v.

[52] de Gruchy, William Laurence. L'ancienne coutume de Normandie. Jersey, 1881. 420 p.

[53] Philippe de Remi. Coutumes de Beauvaisis; texte critique pub. . . . par. Am. Salmon. Paris, Picard, 1899–1900. 2 v.

[54] Marnier, A. J. Le conseil de Pierre de Fontaines, ou Traité de l'ancienne jurisprudence française. Paris, Joubert; Durand, 1846. 532 p.

[55] Rapetti, P. Li Livres de jostice et de plet; pub. pour la première fois d'après le manuscrit unique de la Bibliothèque Nationale, avec un glossaire des mots hors d'usage par P. Chabaille. Paris, Didot, 1850. lii, 451 p.

[56] Viollet, P. Les établissements de Saint-Louis. Paris, Renouard, H. Loones, 1881–86. 4 v.

[57] Planiol, M. La très ancienne coutume de Bretagne, édition critique. Rennes, Plihon et Hevré, 1896. 566 p.

[58] Laboulay et Dareste. Le grand coutumier de France. Nouv. éd. Paris, Durand et Pedone-Lauriel, 1868. 848 p.

the latter only reproduced the Gothic editions and did not make use of all the available manuscripts.

Lack of space makes it impossible to do more than refer to a further source of the law of the feudal period, court decisions. They are dealt with in modern histories such as those of Chenon and Brissaud, which will be referred to later, and are also discussed along with regional customs in the first volume of the *Continental legal history series* (p. 203–250).

Monarchical Period

From the point of view of the historian interested primarily in external history, the most important events of the monarchical period, beginning with the sixteenth century and continuing to the end of the ancient régime, are the official compilation of the customary law, the revival of the importance of legislation, and the appearance of the works of a number of jurisconsults who occupy much the same position in the legal literature of France as do Littleton, Coke, and Blackstone in ours.

Although Charles VII ordered the official compilation of the customary law, the real work was not begun until the reign of Charles VIII. Of the more important compilations, *Coutumes d'Orléans* was promulgated in 1509, *Coutumes de Paris* in 1510, and *Coutumes de Bretagne* in 1539. Later, near the end of the same century, many of the early compilations were revised. Bourdot de Richebourg collected practically all the official compilations in 1724 in a work which might almost be called classical.[59]

Royal Legislation

In so far as effect on modern law is concerned, the most important legislation is that of the reign of Louis XIV. Among the ordinances which should be mentioned are one of 1667 dealing with procedure and published under the name *Ordonnance civile touchant la réformation de la justice* (sometimes called *Code Louis*) and another of 1670 dealing with criminal matters. But the best known to Americans are those of 1673 and 1681 concerning, respectively, commercial and maritime affairs. The first was commonly called *Code Savary*, the name being derived from

[59] Bourdot de Richebourg, C. A. Nouveau coutumier général. Paris, Le Gras, 1724. 8 pt. in 4 v.

that of its distinguished inspirator. It is also sometimes referred to as the *Code marchand.* The second went under the name of *Code de la marine*, and in addition to having formed the basis of modern French maritime law it is often cited in American and English cases as one of the great maritime codes. The legislation during the reign of Louis XIV receives extensive discussion in English in the biography of Colbert, the famous minister of Louis XIV, which appears in *Great jurists of the world*, the second volume of the *Continental legal history series* (pp. 248–282).

There are two collections of royal legislation or *ordonnances* which merit attention. The publication of the first, *Collection des ordonnances et lois françaises*, commonly called *Collection des ordonnances du Louvre* and often *Le recueil des ordonnaces des rois de France de la troisième race*[60] was begun by Eusèbe de Laurière, the first volume appearing in 1723. Interrupted by the Revolution its publication was continued by the *Académie des inscriptions et belles-lettres.* The legislation covered goes down to 1515. The legislation after that date, being considered within the field of modern history, is being prepared for publication by *l'Académie des sciences morales et politiques.* While this collection is not perfect it is the best that exists. The other collection is the result of private enterprise and represents the work of Isambert, Jourdan, and Decrusy. Its title is *Recueil général des anciennes lois françaises*,[61] but it is usually cited under the title *Recueil d'Isambert* or *Recueil de Jourdan et Isambert.* This latter collection is incomplete and unhappily contains a number of errors.

Jurisconsults

Lack of space makes it impossible to do much more than mention the names of the outstanding jurisconsults of the sixteenth century. Judged from the point of view of effect on modern law the most important is Charles Du Moulin (1500–1566), who, besides producing as his greatest work a commentary on the first title of the Custom of Paris,

[60] Ordonnances des roys de France de la troisième race, recueillies par ordre chronologique. Paris, Imprimerie Royale, 1723–1847. 23 v.

[61] Isambert, Jourdan, Decruy. Recueil général des anciennes lois françaises, depuis l'an 420 jusqu'à la Révolution de 1789. Paris, 1822–33. 29 v.

Traité des fiefs, wrote among other treatises on Roman law one entitled "*Extricatio labyrinthi dividui et individui*," which served as the basis of the present French theory of divisible and indivisible obligations. (Civil code, arts. 1217 to 1225.) Other writers of the same century who helped to shape the law of their time are d'Argentré, Coquille, and Loysel.

The foremost writer of the seventeenth century is Jean Domat (1625–1694), whose treatise, *Les lois civiles dans leur ordre naturel*, besides exercising an influence on the writers of the eighteenth century, notably Pothier, was responsible for several articles in the Civil code. A 4-volume edition, with references to the Civil code, was published by Joseph Rèmy in 1829 and 1835.[62] Attention should be called to an early English translation (1720) by William Strahan, advocate in Doctors' Commons, which was edited by Luther Cushing in 1850 and published under the title *The civil law in its natural order*.[63] The preface to this translation which was commonly found on the shelves of American lawyers of two generations ago, contains a short account of Domat's life.

The best known and most popular pre-code jurisconsult is Robert Joseph Pothier who was born at Orleans in 1699 and died in 1772. No other writer contributed as much to French law as it ultimately appeared in the Civil code. Professor at the University of his native city, he, unlike his predecessor Domat, made no attempt to treat the law as a whole but wrote a series of treatises on the different subjects comprised in practically the entire field of the civil law. The outstanding qualities of his works are generally said to be their clarity, precision, and rational arrangement; their greatest defect, lack of originality. Pothier's scientific career began with the publication in 1740 of the *Coutumes d'Orléans*, which was revised in 1760 and may be said to form an introduction to his other works, of which the best known is his *Traité sur les obligations* published in

[62] Domat. Les lois civiles dans leur ordre naturel, nouv. éd. en rapport avec le Code civil, par J. Remy. Paris, Gobelet, 1835. 4 v.

[63] Domat. The civil law in its natural order. Edited from the 2d London ed., by Luther G. Cushing. Boston, Little and Brown, 1850. 2 v.

1760. Usually it is preferable to use original editions but as these are often difficult to obtain, reference should be made to the more important later editions of Pothier's works. Probably the best is that of Bugnet, in 11 volumes, which were first published between 1845 and 1848 and were annotated to the Civil code.[64] Another important edition which is often referred to is that of Dupin.[65]

Pothier's treatises in addition to their popularity in France were well known to the earlier generations of American lawyers. While they are now largely of historical value only, it is believed that the different translations of particular treatises which appeared in the first half of the last century are still of sufficient importance to be indicated in a note.[66]

No discussion of French jurists and legal writers would be complete without some reference to Jacques Cujas (1522–1590) who was responsible for the firm establishment of the humanist and historic method of treatment of Roman jurisprudence as opposed to the earlier scholastic method. His life, works, and place as a Romanist are fully dealt with in *Great jurists of the world*, the second volume of the *Continental legal history series.*

Before turning to modern works on French legal history mention should be made of the fact that the same volume contains an essay dealing with Pothier and his place as a jurist (447–476) and a few pages devoted to a discussion

[64] Bugnet, M. Œuvres de Pothier, annotées et mises en corrélation avec le Code civil et la législation actuelle. Nouv. éd. Paris, Cosse et Marchal. 1861–90. 11 v.

[65] Dupin. Œuvres de Pothier. Nouv. éd. Paris, Béchet, 1835. 11 v.

[66] Pothier, R. J. A treatise on obligations, considered in a moral and legal view. Tr. from the French. Newbern, N. C., Martin and Ogden, 1802. 2 v.

Treatise on the contract of sale. Tr. from the French by L. S. Cushing. Boston, C. C. Little and J. Brown, 1839. 406 p.

A treatise on maritime contracts of letting to hire. Tr. by Caleb Cushing. Boston, Cummings and Hilliard, 1821. 170 p.

A treatise on the contract of partnership, with the Civil code and Code of Commerce relating to that subject, in the same order. Tr. from the French, with notes referring to the decisions of the English courts. By O. D. Tudor . . . London, Butterworths, 1854. 144 p.

of Du Moulin (pp. 105–106, 458–460). In passing, attention should also be called to the fact that the essays contained in this volume give a valuable exposition of the legal background of the time during which each of the jurists discussed lived. A very good short discussion of the jurists, as well as royal legislation, from 1500 to 1789 may be found in the first volume of the same series (pp. 251–273).

Modern Legal Histories

It is somewhat of a temptation to pass in review the entire field of works devoted to French legal history, but it is believed that the purposes of this discussion can be better served by devoting our time to those which are more important.

In a review of a recent history of French law written by Professor Declareuil, of Toulouse, Professor Hazeltine, of Cambridge, calls attention to the fact that the work of writing a one-volume legal history is a task which few French jurists have undertaken. (*Some aspects of French legal history*, 43 Law Quarterly Review 212.) It was done by Esmein and Viollet and more recently by Declareuil, who are representative of that clarity and conciseness of style which are the outstanding characteristics of the best of French scholarship.

Professor Esmein's *Cours élémentaire d'histoire du droit français*[67] was first published in 1892 primarily for the use of first-year law students. Due to this fact it is principally devoted to a study of the history of public law and only deals with private legal institutions in so far as they relate to public law. It begins with a short chapter on Roman institutions in Gaul in the fourth century and as is usually the case with French legal histories, goes down to the end of the *ancien régime* in 1789. Always a very popular work it was recently revised by Professor Génestal and published in a fifteenth edition. Although somewhat systematic it should be classed as one of the best French legal histories.

The recent scholarly work of Professor Declareuil, *Histoire générale du droit français*,[68] like that of Professor

[67] Esmein, A. Cours élémentaire d'histoire du droit français. 15. éd. Paris, Recueil Sirey, 1925. 784 p.

[68] Declareuil, J. Histoire générale du droit français des origines à 1789. Paris, Recueil Sirey, 1925. 1,077 p.

Esmein, deals primarily with public law. While adapted to the needs of first-year students it is also intended to be used by more advanced students. More thorough and equally scholarly, Professor Declareuil's work should enjoy a popularity comparable with that of its predecessor. It might be added that it has the reputation of being particularly good with respect to the institutions of the monarchical régime.

Unlike the two histories which have just been referred to, the one-volume work of Professor Viollet, *Droit privé et sources. Histoire du droit civil français*,[69] is primarily a history of private law. The first part is devoted to sources and the second and third to the development of such important fields as persons, the family, property, and contracts. It is the only good one-volume work on the history of private law.

Professor Viollet was also the author of an equally important history of political and administrative institutions which deals at length with the public institutions of the various periods of French history.[70]

The different works which have just been referred to are principally devoted to one particular field, private, or public law. In addition there are two well-known works which attempt to cover the entire field of legal history, those of Brissaud and Chenon.

Professor Brissaud's *Manuel d'histoire du droit français*[71] is a 2-volume work which is divided into three parts, of which the first is devoted to sources, the second to public law, and the third to private law. The first two parts are arranged chronologically, while in the third the author abandons the chronological arrangement for the purpose of treating the development of leading doctrines under a num-

[69] Viollet, P. Droit privé et sources. Histoire du droit civil français. 3. éd. Paris, Larose et Tenin, 1905. 1,012 p.

[70] Viollet, P. Droit public. Histoire des institutions politiques et administratives de la France. Paris, Larose & Tenin, 1890–1893. 3 v. I. Période gauloise, Gallo-romaine, franque, 1890. II. Période française, moyen-âge, 1898. III. Période française, moyen-âge suite et fin, 1903.) Le roi et ses ministres pendant les trois derniers siècles de la monarchie, 1912. 615 p.

[71] Brissaud, J. Manuel d'histoire du droit français (sources, droit public, droit privé). Paris, Fontemoing, 1898–1904. 1,892 p.

ber of comprehensive headings. The work is remarkable for its breadth of learning and extensive use of every possible source. At the same time it contains a number of inaccuracies and for that reason should be read with caution. Different portions of Professor Brissaud's work have been translated into English and appear in the *Continental legal history series*, notably in Volume III and in Volume IX, entitled, respectively, a *History of French private law* and a *History of French Public Law.*

The recent scholarly work of Professor Chénon was cut short by the unfortunate death of the author, who was only able to complete the first volume. A second volume is now being prepared by Professor Olivier Martin, of the Paris faculty. When finished the *Histoire générale du droit français public et privé*[72] will, unlike most French histories, cover the evolution of public and private law down to 1815. The first volume, which deals with the Gallo-Roman, Frankish, and feudal periods, is arranged chronologically and in addition to discussing private and public institutions, contains excellent summaries of the more important source material of each period. Probably no work on French legal history is its equal in the treatment of the evolution of the law during the feudal-customary period.

Attention should be called here to a valuable periodical devoted to legal history, *La revue historique de droit français et étranger*, which was founded in 1855 by a group of important legal historians of the time.

Before passing on to the more important historical studies of particular branches of the law some reference should be made to several writers whose works, although referred to from time to time, are no longer considered as of first importance. Professor Glasson, a prolific writer, produced an 8-volume history of French law and institutions,[73] an elementary manual,[74] and a 6-volume comparative history

[72] Chénon, E. Histoire générale du droit français public et privé des origines à 1815. Paris, Recueil Sirey, 2 v. t. 1, 1926; t. 2, fasc. 1, 1929.

[73] Glasson, E. Histoire du droit et des institutions de la France. Paris, Pichon, 1887–1903. 8 v.

[74] Glasson, E. Précis élémentaire de l'histoire du droit français. Paris, Pichon, 1904. 598 p.

of English and French law,[75] none of which measure up to the high standards of the more important works which have just been discussed. Professor Beaune's works on customary law, published between 1880 and 1889, including the most important, *Droit coutumier français*,[76] although good, are now too old in the light of recent studies. As was often the case with earlier historical works they are somewhat superficial. The same criticism could be made of Klimrath's *Travaux sur l'histoire du droit* which was published in 1843.[77]

Turning now to the more important studies of particular branches of the law, our task is primarily one of selection. A number of pages could be profitably devoted to a discussion of a large array of theses and monographs on particular phases of legal history, but it is necessary to confine our attention to those which appear to be of outstanding importance.

The historical development of marriage has received extensive treatment by a number of French historians. The most important work is that of Professor Lefèbvre, of the Paris faculty, who, under the heading *Cours de doctorat sur l'histoire du droit matrimonial français*,[78] published several separate volumes which comprise *Introduction générale*, *Le lien du mariage* and *Le droit des gens mariés*. Mention should be made of an excellent work by Professor Esmein, *Le mariage en droit canonique*.[79] The best theses are those

[75] Glasson, E. Histoire du droit et des institutions politiques, civiles et judiciaires de l'Angleterre, comparés au droit et aux institutions de la France. Paris, Pedone-Lauriel, 1882–83. 6 v.

[76] Beaune, H. Droit coutumier français: Introduction à l'étude historique du droit coutumier français. Lyon, Briday, 1880. 566 p.

[77] Klimrath, H. Travaux sur l'histoire du droit français, recueillis, mis en ordre avec préface par L. A. Warkœnig. Paris, Joubert, 1843. 2 v.

[78] Lefèbvre, Ch. Cours de doctorat sur l'histoire du droit matrimonial français. Paris, Recueil Sirey, 1906–23. 3 parts and an appendix.

[79] Esmein, A. Études sur l'histoire du droit canonique privé. Le mariage en droit canonique. Paris, Larose et Forcel, 1891. 2 v. A second edition by Genestal is now being published. The first volume appeared in 1929. The second is announced as in press.

of Olivier Martin and Basdevant, *La crise du mariage dans la législation intermédiaire* [80] and *Des rapports de l'église et l'État dans la législation du mariage.*[81] Professor Lefèbvre is also the author of an important history of the law of successions published under the title *L'ancien droit des successions.*[82]

Professor Esmein, whose manual on French legal history has already been referred to, in addition published a valuable history of criminal procedure, *Histoire de la procédure criminelle en France,*[83] which appeared in 1881. A translation of Part I, Title II, and Parts II and III of this outstanding piece of work appears in *History of continental criminal procedure*, vol. v of the *Continental legal history series.* The history of civil procedure is dealt with in English in the seventh volume of the same series in a number of essays from various sources.

Attention should also be called to an important historical study of the custom of Paris now being prepared by Professor Olivier Martin, of the Paris faculty. The first volume was published in 1922 under the title *Histoire de la coutume de la prévôté et vicomté de Paris.*[84] The second volume is now appearing in parts. Professor Olivier Martin is also the author of another shorter work, *La coutume de Paris, trait d'union entre le droit romain et les législations modernes.*[85] This latter work consists of a series of lectures delivered at the University of Utrecht in 1925.

[80] Martin, Olivier. La crise du mariage dans la législation intermédiaire (1789–1804). Paris, Rousseau, 1901. 263 p.

[81] Basdevant, J. Des rapports de l'église et l'État dans la législation du mariage, du Concile de Trente au Code civil. Paris, Larose, 1900. 236 p.

[82] Lefèbvre, Ch. L'ancien droit des successions. Paris, Recueil Sirey, 1912–18. 2 v.

[83] Esmein, A. Histoire de la procédure criminelle en France et spécialement de la procédure inquisitoire, depuis le XIII[e] siècle jusqu'à nos jours. Paris, Larose et Forcel, 1882. 596 p.

[84] Martin, Olivier. Historie de la coutume de la prévôte et vicomté de Paris. Paris, Leroux, 1922–26. 2 v. Vol. 1 has been published; parts, only, of v. 2 have been published.

[85] Martin, Olivier. La coutume de Paris, trait d'union entre le droit romain et les législations modernes. Paris, Recueil Sirey, 1925. 83 p.

In addition mention should be made of two works on legal sources by Professor Tardif, *Histoire des sources du droit français, origines romaines* [86] and *Histoire des sources du droit canonique*,[87] which though somewhat old are still considered as important.

Before closing the discussion of French legal history to the end of the *ancien régime*, it is believed to be well worth while again to call attention to the *Continental legal history series*,[88] different parts of which have been referred to from time to time in the foregoing pages. Published under the direction of an editorial committee of the Association of American Law Schools the series is intended to give a general survey of the historical development of law on the Continent down to modern times and to render accessible to the reader limited to English, selected material from the works of outstanding continental writers. To quote in part from the general introduction to the series, it covers the legal history of "France, Germany, and Italy as the central fields, leaving the history in other countries to be touched so far as might be incidentally possible." The service rendered in broadening the horizon of the American lawyer could hardly be exaggerated.

CODIFICATION

The promulgation of the Civil code in 1804 is the outstanding event in the evolution of French law. The old régime was primarily one of diversity; one might almost say of chaos. Although from time to time various writers expressed a desire for legal uniformity and some progress in that direction was made in the legislation during the reign of Louis XIV, it remained for the revolution to prepare the ground for, and the consulate to achieve, what the monarchy had been unable to bring about—legal as well as political uniformity.

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[86] Tardif, A. Histoire des sources du droit français, origines romaines. Paris, Picard, 1890. 527 p.

[87] Tardif, A. Histoire des sources du droit canonique. Paris, Picard, 1887. 409 p.

[88] The Continental legal history series, published under the auspices of the Association of American law schools. Boston, Little, Brown, & Co., 1912–27. 10 v. See Introduction, p. 3.

As early as 1790 the Constituent Assembly declared that it would undertake the compilation of a general code. The Constitution of 1791 reaffirmed this intention. But the first real step was not taken until 1793, when the convention ordered its legislative committee to prepare a general project. Cambacérès, acting for the committee, presented a plan in August of the same year. It was rejected as being too complicated, not practical enough, and not in accordance with the spirit of the times. Rearranged and revised, it was again presented in 1794 by Cambacérès and again rejected. Later a third plan was presented to the Council of Five Hundred, but without result. A further unsuccessful attempt was made in 1799, when Jacqueminot, a member of the Council of Five Hundred, submitted various laws looking toward codification. These were not even examined. Immediately thereafter the project was revived and this time effectively.

A consular decree of July 13, 1800, named a commission of four members, Tronchet, Bigot-Préameneu, Maleville, and Portalis, who after four months' labor presented a preliminary plan. This plan was submitted to the Court of Cassation and the Courts of Appeal, after which it was sent to the Council with the observations of the judiciary. There it was amended in part and then submitted to the *Tribunat* and legislative corps as the official project of the Government. At first its success seemed doubtful, but the different titles were eventually approved separately and united in the one body on March 21, 1804, when the Code was promulgated under the name *Code civil des Français*.

The Civil code was followed by others at short intervals. The Code of civil procedure was voted in 1806 and became effective on January 1, 1807. The Code of commerce was adopted in 1807 and went into effect on January 1, 1808. The Code of criminal procedure and the Penal code, voted, respectively, in 1809 and 1810, both went into effect on January 1, 1811. Since the promulgation of the codes of the Napoleonic régime other parts of French law have been codified in whole or in part. Forestry laws were codified in 1827 under the name of *Code forestier* and the special rules concerning the penal law applicable to soldiers and

sailors in active service were promulgated in the form of two codes, *Code de justice militaire pour l'Armée de terre* and *Code de justice militaire pour l'Armée de mer* in 1857 and 1858.

Many of the various general works on civil law, such as the elementary treatises of Planiol and Colin and Capitant, give good summary accounts of the adoption and promulgation of the Civil code. A translation of the account given by Professor Planiol may be found in the first volume of the *Continental legal history series* under the title *The Revolution and the Codes* (pp. 274–305). The best article in Anglo-American periodicals is that of Judge Charles S. Lobingier, *Napoleon and his code* (32 Harvard Law Review 114, amplified in 7 American Bar Association Journal, 383). In addition to giving an historical account of the adoption of the Code, it also gives an excellent appreciation of the sources from which its contents were derived. The complete legal history of the intermediary period, the Consulate and the Empire, is dealt with in a valuable work by Professor Esmein.[89] The various documents concerning the preliminary work of codification have been published in different works. In 1805 Maleville, a member of the consular committee, gave a résumé of the proceedings in his *Analyse Raisonnée du Code civil au Conseil d'État.*[90] They were also reproduced in two later publications by *Fenet* and *Locré.* The work of the latter, *Législation civile, commerciale et criminelle de la France* [91] embraces the five codes of the Napoleonic era, but it is less complete than that of Fenet, *Recueil complet des travaux préparatoires,*[92] with respect to the Civil code, as it does not contain the observa-

[89] Esmein, A. Précis élémentaire de l'histoire du droit français de 1789 à 1814. Révolution, consulat & empire. Paris, Recueil Sirey, reprint 1911. 382 p.

[90] Maleville, J. de. Analyse raisonnée de la discussion du Code civil au Conseil d'État. 3. éd. Paris, 1822. 4 v.

[91] Locré, J. Législation civile, commerciale et criminelle de la France ou commentaire et complément des cinq codes français. Paris, 1826–31. 31 v.

[92] Fenet, P. Recueil complet des travaux préparatoires du Code civil. Paris, 1827. 15 v.

tions of the courts. Another work well worth consulting is that of Portalis, also a member of the consular commission. The latter was published by his grandson in 1845 under the title *Discours, rapports et travaux inédits sur le Code civil.*[93]

CIVIL CODE

The Civil code is the most important single repository of French law. As a sort of general common law (*droit commun*) the principles which it contains govern in the absence of provision in other codes or legislative enactments.

The Code contains a preliminary title and three books, which in turn are divided into titles, chapters, and sections. The preliminary title deals generally with the promulgation, effect, and application of laws. It comprises the first six articles.

Contents

The first book is entitled *Des personnes* and comprises articles 7 to 515. Title 1 deals with the enjoyment and loss of civil rights and the distinction between French citizens and foreigners. Title 2 treats in general of the recordation of births, marriages, and deaths. Title 3 deals with civil domicil; title 4 with absent persons and the effects of absence; title 5 with marriages; title 6 with divorce; title 7 with paternity, filiation, legitimacy, and legitimation; title 8 with adoption; title 9 with paternal authority; title 10 with minority, tutelage, and emancipation; and title 11 with majority and incompetency.

The second book, comprising articles 516 to 710, deals with property. Title 1 treats of immovable and movable property. Title 2 deals with ownership and accession, title 3 with usufruct, and title 4 with easements.

The title of the third book is somewhat vague: *Des différentes manières dont on acquiert la propriété.* Its general content is more than twice that of the other two books combined, since it comprises a total of 1,571 articles (articles 711 to 2281). Title 1 deals with successions. It treats of the opening of a succession and the seisin of the heirs; the

[93] Portalis, J. Discours, rapports et travaux inédits sur le Code civil, publiés et précédés d'une introduction par le vicomte F. Portalis. Paris, Joubert, 1844. 495 p.

civil law presumptions of survivorship; the order of inheritance; irregular succession, including the succession of illegitimates; the succession of surviving husband and wife; escheat; acceptance and refusal of successions; and partition. Title 2 deals with gifts inter vivos and wills. Title 3 deals with contracts and consensual obligations in general. It also contains important provisions concerning proof (arts. 1351 to 1381). Title 4 deals with obligations not arising out of contract, and title 5 with the marriage contract and the rights of husband and wife arising out of the community system and special contract. Titles 6 to 15 deal with a number of particular contracts, such as sales, the contract of exchange, hiring, partnership in so far as the civil partnership and special rules in addition to those contained in the Commercial code are concerned, loans, deposits, aleatory contracts, agency, suretyship, and compromises. Titles 16 to 20 deal with pledges, other than commercial pledges, mortgages and liens, forcible dispossession, and prescription.

Sources

Excellent summaries of various general matters concerning the Civil code, such as its sources, its qualities and defects, may be found in the different elementary treatises on civil law which will be noted later. An exceptionally good discussion appears in the elementary treatise of Professor Planiol (*infra*).

The sources which were utilized are extremely diverse. The more important in the order named are the *Coutumes*, especially that of Paris, Roman law, royal legislation, and laws enacted during the revolutionary period. As between Roman law and the customary law of the North, the influence of the latter was much the greater. The only important subject in which Roman law, in case of conflict between the two, was able to predominate is that of the dotal régime which was not only conserved but extended to all of France. In addition, it supplied the general rules applicable to obligations and ownership. Most of the provisions with respect to incapacity of married women, marital authority, and the community system were derived from customary law, which also furnished a number of rules concerning successions. Revolutionary legislation formed the basis of the law relating to majority, the civil marriage, and the hypothecary

régime. Royal legislation influenced in part the law of gifts, wills, substitutions, and proof. In addition, canon law furnished some of the rules of marriage and those concerning legitimation.

A number of changes brought about by the Revolution were maintained; in a sense they portray the general spirit of the Code. The complete secularization of the law is illustrated in the treatment of marriage which was brought under the control of the civil authorities. Likewise the spirit of equality which during the Revolution had resulted in the abolition of the entire feudal hierarchy was conserved. Finally, in forbidding or confining within strict limits agreements tending to restrict alienability of land, the free disposition of property was favored.

Qualities Defects

It is generally agreed that the outstanding qualities of the code are its unity, precision, and clarity. Its unity is due to the fact that its preparation was placed in the hands of a very small group of men. Its precision and clarity have not been surpassed in either the other codes or subsequent legislation.

Critics of the Code have in the main directed their attention to its general arrangement and its omissions. The general arrangement has been criticized as being artificial and without scientific basis. It is to be noted, however, that Professor Planiol in his elementary treatise does not consider this to be a serious defect. A number of subjects which should naturally be included are omitted, in some instances, because they represent modern development of the law. This is notably true of corporations and industrial, literary, and artistic property, none of which are specifically touched upon.

The official name of the Civil code has been changed from time to time. It was first published as the *Code civil des Français.* As a result of the law of September 9, 1807, its name was changed to *Code Napoléon.* Subsequently upon the Restoration the original name was restored, and finally a decree of March 27, 1852, reestablished the designation *Code Napoléon.* This decree has never been officially abrogated, but since 1870 through usage the code has been cited and referred to under the name *Code civil.*

Official Editions

There have been three official editions. The first is that of its promulgation in 1804. The second was the result of a law of September 3, 1807, the object of which was, principally, to harmonize the terminology of the Code with the imperial régime which followed the Consulate. Such words as *consul*, *république* and *nation* were replaced by *empereur*, *empire*, and *État*. The third and last official edition was published in 1816. The changes made, like most of those in the second edition, are of political importance only and explain the presence of the terms, *roi*, *le royaume*, and *procureur de roi* in the Code as it now exists.

Annotated Editions

Private editions vary in size and manner of treatment. The large annotated editions such as Dalloz,[94] Fuzier-Herman,[95] and Sirey[96] represent remarkable work. The first edition of the *Code civil annoté de Dalloz* was published in three volumes between 1873 and 1875. It was followed by a second edition, forming five volumes, which were published between 1900 and 1907 and are annotated to both jurisprudence and doctrine. A supplement was published in 1921 under the title *addition*, and since then shorter supplements have appeared approximately every three years. The annotated Code of Fuzier-Herman, which follows the general plan of that of Dalloz and consists of four volumes, was published between 1882 and 1898. A supplement of two volumes appeared between 1900 and 1906. That cited under the name Sirey, now in its fifth edition, was published in parts between 1911 and 1920. It should be noted that it is not published by the *Recueil Sirey* but by Godde.

In addition to the larger works just mentioned excellent pocket editions with short annotations to subsequent legislation and jurisprudence are published by the same pub-

[94] **Dalloz. Nouveau Code civil annoté et expliqué d'après la jurisprudence et la doctrine. Paris, Dalloz, 1900–1907. 5 v. Additions 1921. Suppléments 1924, 1927.**

[95] **Fuzier-Herman, E., et Darras, A. Code civil annoté. Paris, L. Larose, 1885–98. 4 v. Supplément par Th. Griffond. Paris, 1900–06. 2 v.**

[96] **Sirey, J. Code civil annoté. 5. éd. Paris, Marchal et Godde, 1911–20. 4 v.**

lishers. That published by Dalloz,[97] part of the *Petite collection Dalloz*, seems to be the best. Revised annually, it sets forth in full all legislation pertaining to and modifying provisions of the Code. The similar publication of the *Recueil Sirey*, [98] part of the collection of *Petits codes Carpentier*, is also important.

Translations

There are a number of English translations. The latest are those of Henry Cachard,[99] published in 1895, and Blackwood Wright,[1] published in 1908. The former has the reputation of being the better translation.

Development of Civil Law

The subsequent growth of French civil law can not be discussed in detail here. Attention should, however, be called to a number of scholarly studies of the later evolution of legal institutions, which are well worth consideration.

The promulgation of the Civil code in France and the subsequent agitation in favor of codification in Germany gave birth to the German historical school of jurisprudence, an important doctrine of which was that codification arrests the full development of the law which can only result from a slow process of evolution. In an excellent article in the *Livre du centenaire* (*infra*) Professor Saleilles, of Paris, after referring to Savigny's *Of the vocation of our age for legislation and jurisprudence*,[2] develops the theory that the Civil code, in laying down general principles instead of attempting minute regulation of details, made it possible for the judge, with the freedom of interpretation provided for in the Code, to adapt the law to changing economic and social conditions.

Other writers have developed in greater detail the changes in the law since the promulgation of the Code. Professor

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[97] Dalloz. Code civil annoté. 29 éd. Paris, Dalloz, 1928–29. 976 p.

[98] Carpentier, A. & E. Code civil. Paris, Recuel Sirey, 1927. 1075 p.

[99] Cachard, Henry. The French Civil code, with the various amendments thereto as in force on March 15, 1895. London, Stevens and sons, 1895. 611 p.

[1] Wright, E. B. The French Civil code (as amended up to 1906) translated into English, with notes explanatory and historical, as comparative references to English law. London, Stevens and sons, 1908. 480 p.

[2] See Philosophy of law, p. 37, note 80.

Charmont of Montpellier in *Les transformations du droit civil*[3] discusses the evolution of the law, as well as the need for development, in such particular fields as the family, marriage, the rights of married women, the position of natural children, property, and the extension of the basis of responsibility, particularly with reference to the modern doctrine of division of risk. Professor Duguit, of Bordeaux, in a series of interesting lectures delivered in Argentina and later published under the title *Les transformations du droit privé*[4] deals with the general trend, not only in France, but in other countries as well, from the idealism and individualism of the early part of the last century to present-day realism and socialism.

Translations of portions of both works appear in *Progress of continental law*, vol. XI of the *Continental legal history series*. The same volume contains translations of chapters, relating to the same subject, taken from Dr. Alvarez' *Une nouvelle conception des études juridiques*.[5]

Another work of importance, dealing particularly with the inadequacy of the Civil code to meet modern social problems, is Professor Morin's *Les revoltes des faits*.[6] Mention should also be made of a series of articles contained in *Les transformations du droit*,[7] published on the occasion of the fiftieth anniversary of the *Société de législation comparée*. This important collection, in addition to a number of articles devoted to such subjects as social legislation, the development of administrative jurisprudence, copyright, maritime legislation, and legislative changes in various countries during the preceding fifty years, includes an inter-

[3] Charmont, J. Les transformations du droit civil. Paris, Colin, 1912. 294 p.

[4] See Philosophy of law, p. 43, note 1.

[5] Alvarez, A. Une nouvelle conception des études juridiques et de la codification du droit civil. Paris, Pichon et Durand-Auzias, 1904. 234 p.

[6] Morin, G. La révolte des faits contre le Code. Paris, Grasset, 1920. 254 p.

[7] Les transformations du droit dans les principaux pays depuis cinquante ans (1869–1919) Livre du cinquantaire de la législation comparée. Paris, Librairie générale de droit et de jurisprudence, 1923. 2 v.

esting and scholarly dissertation on the growth of French law through legislation and the influence of doctrine and jurisprudence, written by Professor Capitant, of the Paris law faculty.

Before leaving the general subject of the evolution of civil law since the promulgation of the Code, reference should also be made to the extended discussion of legislative, jurisprudential, and doctrinal changes since 1804, contained in the first volume of the supplement to Baudry-Lacantinerie. Professor Bonnecase,[8] of Bordeaux, whose work on the nineteenth century school of interpreters of the Code will be referred to presently, develops in detail not only legislative changes in particular fields but also the effect of the present conception of the role of legal writers on present tendencies in doctrine and jurisprudence.

Treatises Commentaries

At the time of the promulgation of the Code it was not uncommonly thought that the text of the law would suffice for the solution of legal problems. It was not long, however, before a number of treatises and commentaries devoted to civil law made their appearance; these with others, which followed during the course of the last century, represent a product of juristic labors which is remarkable both for its quantity and quality.

The general characteristics of the nineteenth century writers on civil law have received extensive treatment from the pens of latter-day writers. Short accounts of the development of legal writing are contained in the elementary treatises on civil law, such as those of Professors Planiol, Colin, and Capitant, and Baudry-Lacantinerie. Perhaps the best extensive discussions of the general trend of the doctrine of the last century are to be found in an article in the *Livre du centenaire*, *Les interprètes du Code civil*, by Professors Charmont and Chausse, and a monograph by Professor Bonnecase entitled "*L'école de l'exégèse.*"[9] To

[8] Bonnecase, J. Supplément au traité théorique et pratique de droit civil de Baudry-Lacantinerie. Paris, Recueil Sirey, 1924–30. 5 v. See Baudry-Lacantinerie, *infra*.

[9] Bonnecase, J. L'école de l'exégèse en droit civil. Les traits distinctifs de sa doctrine et de ses méthodes d'après la profession de foi des plus illustres représentants. 2. éd. Paris, de Boccard, 1924. 285 p.

paraphrase Professor Bonnecase, the outstanding trait of the earlier generations of commentators was the cult of the text and an abounding faith in its proper virtue. Laboring under the illusion of the all sufficiency of the text of the law and disregarding defects and omissions they attempted to ascertain through a process of deductive reasoning based on the text itself or the general spirit of the code, the intention of the legislator. Judged by modern standards this method of treatment is insufficient; but it served a useful purpose, namely, that of deriving from the written law its full import.

Present-day writers follow a bolder and more practical plan. They no longer regard the textual rule as immutable and all sufficient but look upon the rôle of the jurist as including that of pointing out defects and urging reforms.

At present the earlier treatises and commentaries of the nineteenth century school of interpreters enjoy only a relative authority. Their value is in the main historical and for that reason the more important only will be mentioned before passing on to several treatises of the last century which are still regarded as being of practical value.

We find among the first to appear that of Toullier,[10] professor at Rennes, who produced an incomplete work covering the first 1,851 articles of the code. It was later completed by Duvergier. The publication of the first edition began in 1811, and the sixth and last edition was published between 1846 and 1848. The best part is that dealing with obligations.

The first long and complete treatise devoted to civil law is that of Duranton, dean of the Paris faculty, which made its appearance in 1825 under the title *Cours de droit civil.*[11] The last and fourth edition was published in 1844.

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[10] Toullier, C. Le droit civil français, suivant l'ordre du Code, continué et complété par J. B. Duvergier. 6. éd. Paris, Cotillon, 1846–48. 7 v. in 14.

[11] Duranton, A. Cours de droit français suivant le Code civil. 4. éd. Paris, Thorel, 1844. 22 v.

Other general works of about the same time are those of Troplong [12] and Marcadé and Pont.[13] That of the former, which is seldom cited at present, is sometimes referred to as "the novel of the law." The *Explication théorique et pratique* of Marcadé and Pont began to appear in 1842 and passed through several editions. For a time it enjoyed a certain popularity in France and in addition is said to have exercised considerable influence on the compilation of the Rumanian Code.

There are four works produced by the nineteenth century school of interpreters which are of sufficient importance to merit more than cursory mention.

Of these the more important are the works of Aubry and Rau and Demolombe.

The *Cours de droit civil* [14] by Aubry and Rau is often called the *chef d'oeuvre* of French juridical science of the last century. It had as its basic method that of a German manual published in 1808 by Charles Solomon Zachariae,[15] at the time professor at Heidelberg. This manual was imitated by Aubry and Rau, then professors of law at Strasbourg and later counsellors at the Court of Cassation. Little by little the original German work was revised and added to, to the point where it became the personal product of the authors, the first edition appearing in five volumes between 1838 and 1847. The treatise is remarkable for its original plan, its rigorous method and concise statement of conclu-

[12] Troplong, R. Le droit civil expliqué suivant l'ordre des articles du code. Paris, Hingray, 27 v. The different parts were published in several separate editions between 1845 and 1872. They are sold separately.

[13] Marcadé et Pont. Explication théorique et pratique du Code civil. Paris, Delamotte; Recueil Sirey. 13 v. The different parts were published separately in second, third, seventh, and eighth editions between 1874 and 1894.

[14] Aubry et Rau. Cours de droit civil français, d'après la méthode de Zachariae. 5. éd. rev. par Rau, Falcimaigne, et Gault. Paris, Marchal et Billard, 1897–1922. 12 v.

[15] Zachariä von Lingenthal, K. Le droit civil français, tr. de l'allemand sur la 5. éd. par G. Massé et Ch. Vergé. Paris, Durand, 1854–60. 5 v.

sions. Its plan was revolutionary in that the subject matter, unlike that of the preceding commentaries, was arranged independently of the order of the Code. The care taken in the statement of conclusions has not been exceeded in any of the other general works on French civil law. A fifth edition, representing the combined work of G. Rau, Falcimaigne, and Bartin, was terminated in 1922. This last edition, which contains all the qualities of the work of the original authors, covers the entire field of civil law in concise form and with that clarity of style for which French writers are noted.

Demolombe, professor and dean of the faculty of Caen, in his *Cours de Code Napoléon*[16] left an uncompleted work which, in spite of its 31 volumes, only covers the first 1,386 articles of the Code. The work itself consists of a series of treatises which follow closely the order of the Code. The first volume appeared in 1844 and with most of those which followed, has gone through a sixth edition. Professor Guillouard,[17] also of Caen, undertook the publication of a series of treatises designed to complete the work of Demolombe. The *Cours de Code Napoléon* is noted for qualities quite different from those which characterize the treatise of Aubry and Rau. Less precise and methodical, the author reasoned less closely from the text, being more inspired by the practical needs of the profession. The treatise is sometimes criticized on the ground that it became too voluminous and failed to take into account the progress of the law.

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[16] Demolombe, C. Cours de Code Napoléon. Paris, Lahure. 32 v. Vols. 11 and 12 on servitudes were published in a 7th ed. in 1882; vols. 24–31 on obligations in a 5th ed. in 1880–95; vol. 32 on divorce, by Grévin, in 1896, and the other volumes in a 6th ed. in 1880–82.

[17] Guillouard, L. Droit civil. Paris, Pedone-Lauriel. 19 v. Guillouard's publications comprise the following treatises: Traité du prêt, 2. éd., 1893; Traité du contrat de mariage, 3. éd., 1894–96, 4 v.; Traités de la vente et de l'échange, 3. éd. 1902–04, 2 v.; Traité du contrat de louage, 3. éd. 1891, 2 v.; Traités du cautionnement & des transactions, 2. éd., 1895; Traités des contrats aléatoires & du mandat, 2. éd., 1894; Traité du contrat de société, 2. éd., 1892; Traités du nantissement, 2. éd., 1896; Traité des privilèges & hypothèques, 1897–1900, 4 v.; Traité de la prescription, 2. éd., 1901–02, 2 v.

The two other works of the nineteenth century school of interpreters, those of Demante and Colmet de Santerre and of Laurent, though still consulted, are of less importance.

The former, *Cours analytique de Code civil*,[18] was begun by Demante, professor at the Paris faculty. The portion dealing with the articles of the Code subsequent to article 980 was completed by Colmet de Santerre. The first edition appeared between 1849 and 1873. The different parts have been published in second and third editions.

The latter, *Principes de droit civil français*,[19] is a Belgian work by Laurent, professor of law at Ghent, which failed to obtain in France the same degree of success as other nineteenth century treatises. Although worth consulting, it is not always a safe guide. Furthermore, marking as it does the high-water mark of the theory of the all sufficiency of the text with its resulting rigidity of interpretation, it is less adaptable to the needs of practitioners.

Within the last few years two new general works, those of Baudry-Lacantinerie and Planiol and Ripert, have begun to supplant their predecessors, excepting, of course, Aubry and Rau, whose treatise is still regarded as among the first authorities on civil law.

Of all the commentaries or treatises devoted to civil law, probably the *Traité théorique et pratique de droit civil*,[20] cited under the name Baudry-Lacantinerie, is the best known in America. The work itself marks a radical change in method. Instead of representing the efforts of one or two

[18] Demante, A., et Colmet de Santerre. Cours analytique de Code civil. Paris, Plon; Chevalier-Marescq. 9 v. Vols. 1 and 2 on persons, were published in a 3d ed. in 1895–96; the others in a 2d ed. in 1883–89.

[19] Laurent, F. Principes de droit civil français. 5. éd. Bruxelles, Bruylant, 1893. 33 v.

Supplément par Siville. Bruxelles, Bruylant; Paris, Chevalier-Marescq, 1898–1903. 8 v.

[20] Baudry-Lacantinerie, J. Traité théorique et pratique de droit civil. 3. éd. Vol. 28. 4. éd. Paris, Recueil Sirey, 1905–09. Vol. 28, 1924. 29 v., including index.

Bonnecase, J. Supplément. Paris, Recueil Sirey, 1924–30. 5 v.

men its publication was begun in 1895 in the form of separate treatises under the direction of Baudry-Lacantinerie, dean of the Bordeaux faculty, with the collaboration of a number of eminent professors of the different faculties. At present the first twenty-seven volumes have gone through three editions and the twenty-eighth through four. A 4-volume Supplement, by Professor Bonnecase, also of the Bordeaux faculty, has been recently published. Due to the importance of the work time should be taken to indicate its general content. Five volumes are devoted to persons. One treats of property. The law of succession is dealt with in three volumes. Two volumes are devoted to gifts inter vivos and testamentary dispositions. Contracts or conventional obligations form the subject matter of four volumes. Three volumes deal with the marriage contract. One volume deals with sales. The contract of hiring is dealt with in three volumes. Partnerships, loans, and deposits form the subject matter of one volume. Aleatory contracts, agency, and suretyship are dealt with in a single volume. Three volumes deal with pledges, liens, and mortgages, and prescription forms the subject matter of another and last volume.

The important treatise of Professors Planiol and Ripert, *Traité pratique de droit civil français*,[21] when completed will contain about 13 volumes, of which several have already appeared. Its general plan is the same as that of Baudry-Lacantinerie, it being published under the direction of Professors Planiol and Ripert, both of Paris, with the collaboration of a number of important jurists. It is highly recommended because of its practical value.

Critical appreciation is largely a question of individual taste, but it can be safely said that the two works just mentioned with that of Aubry and Rau represent the leading present-day French authorities on civil law.

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[21] Planiol and Ripert with the collaboration of Nast, Morel, Picard, Rouast, Cassin, Becqué, Hamel, Savatier, Maury, Vialleton, Esmein, Radouant, and Trasbot. Traité pratique de droit civil français. Paris, Librairie générale de droit et de jurisprudence. 1925–28. The parts already published comprise: v. 1, Les personnes; v. 2, La famille; v. 3, Les biens; v. 8 and 9, Les régimes matrimoniaux; v. 12, Sûretés réelles et hypothéques. The complete collection will comprise about 13 volumes.

Two other comparatively recent treatises, while not as important, deserve to be noticed—the *Commentaire théorique et pratique* [22] by Huc, formerly professor at Toulouse, and the uncompleted *Cours de droit civil français* [23] by Charles Beudant, formerly dean of the Paris faculty. Published by his son Robert Beudant, professor of law at the University of Grenoble, the first volume of the latter work appeared in 1896.

Elementary Treatises

In addition to the general treatises on civil law there are several elementary works designed primarily for the use of students, but which should be of interest as well as of practical use to those who are not accustomed to the intricacies of a foreign legal system. Of these the more popular are the scholarly works of Professors Colin and Capitant [24] and Professor Planiol.[25] That of Professor Baudry-Lacantinerie,[26] while not now as popular as the others, is well worth consulting. Mention should be made of the fact that the first volume of a student text by Professor Josserand of Lyon has just been published.[26a] When completed it will comprise three volumes.

Before going on to the more important periodicals, mention should again be made at this point of the *Livre du centenaire*,[27] already referred to from time to time in the foregoing pages. Published on the occasion of the hundredth anniversary of the code, it contains a number of valuable articles dealing with its adoption, subsequent history, and influence.

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[22] Huc, T. Commentaire théorique & pratique du Code civil. Paris, F. Pichon, 1892–1903. 15 v.

[23] Beudant, C. Cours de droit civil français. Paris, Rousseau, 1896–1908. 7 v. including Introduction. Explication du titre préliminaire.

[24] Colin et Capitant. Cours élémentaire de droit civil. 5 éd. Paris, Dalloz, 1927–29. 3 v.

[25] Planiol, M. Revisé par Ripert, G. Traité élémentaire de droit civil. 10. éd. v. 1, 11. éd. Paris, Librairie générale de droit et de jurisprudence, 1926–28. 3 v.

[26] Baudry-Lacantinerie, G. Précis de droit civil. Rev. par P. Guyot. 13. éd. v. 1, 14. éd. Paris, Recueil Sirey, 1925–27. 3 v.

[26a] Josserand, L. Cours de droit civil positif français. Paris, Sirey, 1929. v. 1, 1015 p.

[27] Le code civil. Livre du centenaire, pub. par la Société d'études législatifs. Paris, Rousseau, 1904. 2 v.

No discussion of the literature of French civil law would be complete without some reference to the important periodicals devoted to a study of various legal problems falling within its scope. While several of those about to be referred to are general in their scope, due to the fact that they are preponderately devoted to civil law, it is deemed advisable to mention them at this point.

The outstanding periodical is the *Revue trimestrielle de droit civil*, which was founded by Professors Esmein, Massigli, Saleilles, and Wahl, the first number appearing in 1902. To paraphrase Professor Planiol, it is an excellent working tool for those who have a serious interest in the civil law.

Another extremely valuable review is the *Revue critique de législation et de jurisprudence*, which is the result of the fusion in 1853 of two older reviews—*Revue de législation et de jurisprudence*, better known under the name *Revue Wolowski*, the name of one of its founders, and the *Revue critique de jurisprudence*. Suspended during the war, it began to reappear in 1924 under the direction of Professors Capitant and Ripert.

Excellent articles pertaining to historical phases of civil law appear in the *Revue historique de droit français et étranger*, already mentioned in the chapter on legal history.

Two other reviews, *Recueil de l'Académie de législation de Toulouse*, publication of which began in 1852, and *Revue générale de droit, de la législation et de la jurisprudence*, the first volume of which appeared in 1877, are sometimes cited, but are usually considered to be inferior to those already mentioned. Mention should also be made of the *Revue pratique de droit français*, publication of which began in 1856, and the *Semaine juridique*, founded in 1926.

Reference is often made to two older publications, *Themis* and the *Revue Foelix*. At one time very important, they are now largely of historical value. The first appeared between 1820 and 1829. The second, published successively after 1834 under the titles *Revue française et étrangère de législation* and *Revue de droit français et étranger*, ceased publication in 1850.

Divisions of the Code

The general treatises on civil law cover thoroughly the entire field, but there are a number of works devoted to particular subjects which because of their importance should be discussed.

Persons Legal Personality

Although the first book of the Civil code is entitled *Des personnes*, juristic persons are not specifically dealt with. The legal nature of personality forms, however, an important part of most of the treatises on civil and commercial law and is also taken up in some of the works on public law in connection with discussions of the personality of the state. In addition, it has received extensive individual treatment by a number of legal scholars and has been the subject matter of some important and scholarly doctoral dissertations. The term "juristic person" (*personne juridique* or *personne morale*) is applied in French legal literature to establishments founded for public purposes, such as hospitals, educational and charitable institutions, as well as to ordinary associations of individuals.

Some preliminary idea of various continental views of legal personality may be obtained from a series of articles published in the Harvard Law Review by Arthur Machen in 1911 under the title *Corporate personality* (v. 24, pp. 253 and 344).

During the greater part of the last century the traditional French point of view was that juristic persons are fictitious beings conceived by the legislator to facilitate the functions of associations and institutions created by men. Under this theory, which is similar to that of the great German jurist, Savigny, they only possess such rights as are accorded them by law, and, unlike physical persons, are not capable of possessing natural rights. Of the various writers on civil law, it was Laurent who carried the theory of legal fiction to its ultimate extreme (v. 1, p. 367 *et seq.*).

From a theory which regards juristic personality as a fiction of the law, it is an easy step to a second which denies its existence. Under this latter theory the only real persons who are capable of possessing rights are those who form the association. This second theory was first extensively developed in French by Van den Heuvel, a Belgian, in his

De la situation légale des associations.[28] It later formed the basis of a more important work, *Les personnes morales*,[29] by Professor Vareilles-Sommières, dean of the Catholic Law School of Lille, who regarded the fiction of personality as useful only for the purpose of describing in convenient language a complicated situation or state of affairs.

The outstanding scholarly French work on legal personality is that of Professor Michoud, of the Grenoble faculty, who besides giving an excellent account of the various theories, and discussing a number of important questions relating to juristic persons, develops another theory, that of the reality of personality, of which Gierke was the leading German exponent. The thesis of Professor Michoud is that the juristic person is not a fiction nor an artifice to describe a collection of individuals but a reality capable of enjoying rights. Whether it does or not enjoy such rights depends on the acceptance of its personality by the law. Professor Michoud's *La théorie de la personnalité morale*[30] was recently published in a second edition. Another important work is that of the eminent Professor Saleilles, *De la personnalité juridique, histoire et théories.*[31] Professor Saleilles, before his unfortunate death a member of the Paris law faculty, was a partisan of the theory of reality of juristic personality.

In connection with works developing various theories of legal personality attention should be called to Professor Planiol's theory of collective ownership which is set forth in his *Traité élémentaire* (v. 1, p. 984).

The large number of excellent theses which deserve to be mentioned can not be discussed in detail. Of those relating to various questions concerning the personality of religious,

[28] Van den Heuvel. De la situation légale des associations sans but lucratif en France et en Belgique. 2. éd. Bruxelles, Larcier; Paris, Pedone-Lauriel, 1884. 3 p. l., [iii]–iv, [5]–358 p.

[29] Vareilles-Sommières de. Les personnes morales. Reprint. Paris, Pichon, 1919. 683 p.

[30] Michoud, L. La théorie de la personnalité morale et son application au droit français. 2. ed., by Trotobas. Paris, F. Pichon et Durand-Auzias, 1924. 2 v.

[31] Saleilles, R. De la personnalité juridique. Histoire et théories. 2. éd. Paris, Rousseau, 1922. 684 p.

charitable, and educational foundations the more important include Truchy's *Des fondations*,[32] Ravier du Magny's *Le contrat de fondation*,[33] Geouffre de Lapradelle's *Des fondations*,[34] Coquet's *Les fondations* [35] and Tronquoy's *Notion juridique internationale de la fondation*.[36] An excellent thesis giving the various theories of juristic personality is that of Negulesco, *Le problème juridique de la personnalité morale*.[37] Mention should also be made of René Adenis' *Les associations à but non lucratif* [38] and Partheniu's *Le droit social sur les choses*.[39] Several theses also treat the problem of juristic personality from the point of view of capacity and penal responsibility. Of the former, the more important are those of Dedier Rousse, *Capacité juridique des associations*,[40] and of Epinay, *Capacité juridique des associations sans but lucratif*.[41] Of the latter the best is that of Mestre, now professor of law at Paris, *Les personnes morales et leur responsabilité pénale*.[42]

The outstanding works dealing with legal personality in connection with the application of the different theories in the field of public law will be discussed in a subsequent chapter.

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[32] Truchy, C. Des fondations. Paris, 1888. 347 p.

[33] Ravier du Magny, P. Le contrat de fondation. Paris, Larose, 1894. 266 p.

[34] Geouffre de Lapradelle, A. Théorie et pratique des fondations perpétuelles. Paris, Giard et Briére, 1895. 476 p.

[35] Coquet, E. Les fondations privées d'après la jurisprudence. Paris, Larose et Tenin, 1908. 299 p.

[36] Tronquoy, M. De la notion juridique internationale de la fondation. Paris, Rousseau, 1908. 336 p.

[37] Negulesco, D. Le problème juridique de la personnalité morale et son application aux sociétés civiles et commerciales. Paris, Rousseau, 1900. 227 p.

[38] Adenis, R. Les associations à but non-lucratif et le droit de succession. Paris, 1902. 245 p.

[39] Partheniu, C. Le droit social sur les choses, essai sur la nature des propriétés collectives. Paris, Giard, 1908. 220 p.

[40] Rousse. De la capacité juridique des associations en droit civil français. Paris, Rousseau, 1897. 317 p.

[41] Epinay, J. De la capacité juridique des associations formées sans but lucratif. Lille, 1897. 619 p.

[42] Mestre, A. Les personnes morales et le problème de leur responsabilité pénale. Paris, Rousseau, 1899. 360 p.

Before leaving the subject, attention should also be called to an excellent short discussion of legal personality, with copious bibliographic notes, contained in Professor Capitant's *Introduction à l'étude du droit civil*[43] (pp. 193 *et seq.*).

Marriage

The French law of marriage received extensive treatment in English in a work by Kelly,[44] formerly an American lawyer practicing in Paris. Unfortunately Mr. Kelly's book has not been recently revised and fails to take into account a number of legislative changes which have taken place within the past few years. Marriage and divorce in France were also discussed by Mr. Charles Loeb, an American lawyer practicing in Paris, in the Virginia Law Register of 1913 (v. 18, p. 801, also 45 Chicago Legal News, 248). The best French discussions are those contained in the better French treatises on civil law. The latest legislative developments are fully dealt with in the *Cours élémentaire* of Colin and Capitant.

Recent legislation concerning the preliminary formalities surrounding the celebration of marriage is of particular interest. As already indicated, the Code completely secularized marriage. The only ceremony having legal effect is that before the proper civil authorities. In addition, although the age of majority for males was fixed at 21 under the revolutionary régime, the Code placed it at 25 for marriage with the result that men below that age could not marry without the consent of their parents. The legal age for women was placed at 21. Even after attaining majority, both men and women were required to go through a complicated procedure in requesting, in case of refusal, through what were called *actes respectueux*, the consent of their parents before the marriage could take place. During the past few years these provisions, which were thought to be impediments to the free contraction of marriages and in part responsible for their diminishing number and the resulting

[43] Capitant, H. Introduction à l'étude du droit civil. Notions générales. 4. éd. Paris, Pedone, 1922. 455 p.

[44] Kelly, Edmond. The French law of marriage, marriage contracts, and divorce, and the conflict of laws arising therefrom. 2d ed. rev. by Bodington. London, Stevens & sons, 1895. 280 p.

lowering of the birth rate, have received the special attention of the legislature. An act of June 21, 1907, did away with the special age of majority for men, making it possible for them to marry without the consent of their parents upon attaining 21. The necessity for consulting the parents after attaining the age of majority and in case of refusal of consent for resorting to the *acte respectueux* was in part dealt with as early as 1896. As a result of the laws of June 21, 1907, April 28, 1923, and February 7, 1924, persons of full age were almost entirely freed from the formalities required under the older law. Under the law as it now exists if the future spouses have passed the age of 25 no formality is required. Between 21 and 25, if the parents refuse their consent, the marriage may take place 15 days after notification through a notary. If the father and mother disagree in refusing consent, the marriage may take place at once, and in case of a second marriage it is never necessary to consult the parents.

More recent legislation (acts of April 8, 1927, and July 17, 1927) has materially modified various provisions of the Code as to consent of parents to the marriage of minors, publication of banns, and opposition to the celebration of a marriage, thus evidencing a tendency toward even greater liberality. The rules concerning the publication of banns had also undergone other slight legislative changes as the result of the law of 1907, already referred to, and a law of August 9, 1919. At present, although the marriage can not be celebrated earlier than 10 days after publication, it is no longer necessary that the banns be published twice nor that the 10 days include two Sundays.

While the rules relating to capacity and formalities are contained in the first book of the Civil code (arts. 144 *et seq.*), the provisions concerning the marriage contract regulating the property relations of the spouses are to be found in the fifth title of the third book (arts. 1387 *et seq.*).

Marriage Contract

It would hardly be within the scope of the present work to give a detailed account of the numerous rules of law concerning the marriage contract. All that can be done is to point out the principal agreements that the parties may adopt to govern their future property relations. French law

specifically recognizes four different types of marriage arrangements: *Communauté, régime sans communauté, séparation de biens,* and *régime dotal. La communauté* or community of property is characterized by a common mass of property belonging to the two spouses which remains undivided during the duration of the marriage. The community may comprise all or only a part of the property of the husband and wife, depending on the contract, the latter type being the more frequent. Community property is under control of the husband whose powers are almost as extensive as if he were sole owner. The separate property of the wife is also administered by the husband, the revenues falling into the community. Under the second régime there is no community, the property of each spouse remains separate property, but as in the preceding systems, the property of the wife is under the management of the husband. Under the *régime de la séparation des biens,* or separate property, there is of course no community or common mass, but the wife has greater powers of administration than in the second régime and in addition the revenues from her property belong to her. The dotal régime is of Roman origin and in sum is a régime of separate property. It owes its name to the presence of a dowry brought by the wife, the revenues of which, at least, belong to the husband, who may also acquire title. The property of the wife which is not a part of the dowry is called paraphernal property.

In the absence of a special marriage contract, under the terms of article 1400, the parties are presumed to have adopted the community régime which is regulated by law and goes under the name *régime légal.*

There are a number of individual works on the different marital régimes which merit attention. Although it was published in 1894 the *Traité du régime de communauté*[45] by L. and A. Merignhac remains the best work on community property. Separate property received excellent treatment in a recent thesis by Moissinac, entitled *Essai sur la séparation de biens.* It was republished in 1924 under the title *Le con-*

[45] Merignhac, L. et A. Traité du régime de communauté. Paris, Larose, 1894. 2 v.

trat de mariage de séparation des biens.[46] In 1901 the Institute offered a prize for the best work on the dotal régime. It was awarded to Professor Eyquem, of the Bordeaux faculty, whose book, *Le régime dotal, son histoire, son évolution,*[47] besides giving the jurisprudential development of the applicable provisions of the Code also contains a history of the dotal régime. Two other works which are considered to be very good, received honorable mention, those of Dépinay, *Le régime dotal, étude historique, critique et pratique,*[48] and of Griveau, *Le régime dotal en France.*[49] An older work which is sometimes referred to and is still considered to be of value is that of Jouitou, *Étude sur le système du régime dotal.*[50]

An important doctrine concerning the marriage contract is that contained in article 1395 of the code which provides that no change may be made in the terms of the contract after marriage. This article has been dealt with in a number of recent theses of which the more important are those of Louis Henry, *De l'immutabilité des conventions matrimoniales,*[51] Spineano; *Modifications possibles de l'article 1395,*[52] and Fotino, *Étude sur l'immutabilité des conventions matrimoniales.*[53]

Breach of contract to marry

Before leaving the general subject of marriage, attention should be called to the present jurisprudence concerning the effect of breach of contract to marry. The maxim gen-

[46] Moissinac. Le contrat de mariage de séparation de biens. 2. éd. Paris, Pichon et Durand-Auzias, 1923. 198 p.

[47] Eyquem, A. Le régime dotal son histoire, son évolution, et ses transformations au XIX siècle. Paris, Marchal et Billard, 1903, 586 p.

[48] Dépinay, J. Le régime dotal, étude historique, critique & pratique. Paris, Marchal et Billard, 1902. 580 p.

[49] Griveau, P. Le régime dotal en France. Ses avantages et ses inconvenients. Paris, Marchal et Billard, 1902. 175 p.

[50] Jouitou, L. Étude sur le système du régime dotal sous le code civil. Paris, Pion; Chevalier-Marescq, 1882–88. 2 v.

[51] Henry, L. De l'immutabilité des conventions matrimoniales. Paris, 1904. 144 p.

[52] Spineano, A. Modifications possibles de l'article 1395 du Code civil. Paris, 1912. 115 p.

[53] Fotino, N. Étude sur l'immutabilité des conventions matrimoniales. Paris, 1917. 213 p.

erally employed is *Toute promesse de mariage est nulle.* However, French courts allow a cause of action under article 1382 which provides for redress for damages caused by a wrong done. The present French doctrine is dealt with in a very good thesis by Angelesco, *De la rupture des promesses de mariage.*[54]

Divorce

French divorce legislation has had an interesting history. The revolutionary régime which regarded marriage as a civil contract naturally permitted divorce. But the legislation of 1792 was considered to be too liberal, and, while the original code made provision for divorce, the number of causes was materially reduced. Upon the Restoration divorce was abolished and from 1816 to 1884 French law permitted only judicial separation. In the latter year the institution was reestablished and a law of that year as modified in 1886 and 1893 constitutes the existing legislation.

The present grounds for divorce are adultery, conviction of a felony and, to use the French expressions, *excès* and *sévices* and *injures graves. Excès* and *sévices* are practically synonymous and seem to be the equivalent of "cruelty" under the laws of many of the states. Translation of the term *injures graves* is more difficult, due to the fact that it has received liberal interpretation from the courts. Under the present jurisprudence it may be said to include every serious failure to fulfil a marital duty.

Attention should be called to the fact that the procedure to be followed in actions for divorce is contained in the legislation reestablishing the institution which was incorporated in entirety in the Civil code. As a result, somewhat illogically, a procedural matter, which should be dealt with in the Code of procedure, found its way into the Civil code.

There is surprisingly little modern French literature of value dealing with divorce as an individual topic. The best material is that contained in the general treatises on civil law. Valuable short discussions appear in the elementary treatises of Planiol and Colin and Capitant. Reference is

[54] Angelesco, R. De la rupture des promesses de mariage. Paris, Duchemin, 1914. 146 p.

sometimes made to the older works of Coulon [55] and Carpentier.[56] Unfortunately neither has been revised, with the result that they fail to take into account later developments in jurisprudence. French divorce laws, as well as the conflict of laws rules pertaining to divorce, are discussed, however, in a recent 3-volume Belgian work, Piérard's *Divorce et la séparation de corps.*[57]

Several other subjects included within the scope of the first book of the Civil code have received special treatment. Mention should be made of Taudière's *Traité de la puissance paternelle* [58] which, as its title indicates, deals with paternal authority. Legitimation received valuable treatment in Lévy's *Traité pratique de la légitimation,*[59] and marital authority is dealt with in two very good theses, *L'autorité maritale,*[60] by Morizot-Thibault, and *L'autorité maritale sur la personne de la femme,*[61] by Vialleton. Family law and the philosophy of the Civil code are the subject matter of a recent publication by Professor Bonnecase.[61a] A short but very good English summary of the authority of the husband and father may be found in a translation of an article by Charles Sans, *Organization of the family in French law,* which appears in the Juridical Review for 1902 (v. 14, p. 281).

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[55] Coulon, H. Le divorce et la séparation de corps: histoire, législation, debâts parlementaires . . . Paris, Marchal et Billard, 1890–97. 5 v.

[56] Carpentier, A. Divorce et séparation de corps, doctrine et jurisprudence. (Extr. Répertoire du droit français). Paris, Larose, 1899. 2 v. *See also* Bates, L. T. The divorce and separation of aliens in France. New York, Columbia university press, 1929. 334 p.

[57] Piérard, A. Divorce et séparation de corps. Traité théorique et pratique suivant la législation, la doctrine et la jurisprudence, belges et françaises et le droit international. Bruxelles, Bruyland; Paris, Recueil Sirey, 1927–29. 3 v.

[58] Taudière, H. Traité de la puissance paternelle. Paris, Pedone, 1898. 550 p.

[59] Lévy, E. Traité pratique de la légitimation des enfants naturels, simples . . . 2. éd. Paris, Recueil Sirey, 1926. 346 p.

[60] Morizot-Thibault, C. L'autorité maritale (étude critique du Code civil). Paris, Chevalier-Marescq, 1899. 408 p.

[61] Vialleton, H. L'autorité maritale sur la personne de la femme. Étude critique de jurisprudence. Montpellier, 1919. 184 p.

[61a] Bonnecase, J., La philosophie Code Napoléon appliquée au droit de famille. Nouv. ed. Paris, de Bouard, 1928. 370 p.

Obligations

Although occupying one of the most important places in French civil law, the term *obligation* is not defined in the Code. The usual doctrinal definition is one borrowed from the Institutes of Justinian, namely, a duty to another to perform or refrain from performing some act. Under this broad definition it includes conventional obligations or contracts, quasi contracts, torts, and quasi delicts, all of which are dealt with in the Code. The general rules relating to obligations, such as their effect and extinction, are presented somewhat haphazardly in articles 1134 to 1303 as a part of the law of contracts, and quasi contracts and torts receive comparatively little treatment. This general plan was taken from Pothier's treatise on obligations and was in turn borrowed by him from the Institutes of Gaius and Justinian. Modern writers in discussing the law of obligations often follow a very different and more logical plan. They deal with the effect, transmission, and extinction of obligations in general and under the heading *sources* take up particular obligations such as those arising out of contract and tort.

General literature

There are several important works dealing with obligations in general. Although somewhat old, the treatise *Théorie et pratique des obligations*[62] by Larombière, published in its second and last edition in 1885, is still considered to be well worth consulting. This treatise is in the nature of a commentary on the third and fourth titles of the third book of the Code. Professor Demogue,[63] of the Paris Law School, is now preparing a general treatise of about eight volumes of which five dealing with sources have already been published. Judging from the volumes which have appeared, this work when completed will be the most valuable treatise on obligations. Another important work is that of Bufnoir,[64] for more than 30 years a popular professor of the Paris

[62] Larombière, L. Théorie et pratique des obligations, ou Commentaire des titres III et IV, livre III du Code civil. Nouv. éd. Paris, Pedone-Lauriel, 1885. 7 v.

[63] Demogue, R. Traité des obligations en général. Paris, Rousseau, 1923–25. 5 v. When completed the Traité will comprise about eight volumes.

[64] Bufnoir, C. Propriété et contrat. Théorie des modes d'acquisition des droits réels et des sources des obligations. 2. éd., Paris, Rousseau, 1924. 840 p.

Faculty. This latter work consists of a series of lectures and notes collected by his admirers after his death and includes in addition to a discussion of sources of obligations several chapters relating to the acquisition of ownership.

Mention should also be made of an important work on the theory of obligations as contained in the German code, *Théorie générale de l'obligation d'après le projet de Code civil allemand*,[65] by the late Professor Saleilles, of the Paris faculty. While not concerned directly with French law it has had considerable influence with respect to a number of modern French theories relating to obligations.

In addition, attention should be called to an interesting philosophical work by Professor Ripert, of the Paris Law School, *La règle morale dans les obligations*,[66] in which the learned writer deals with the relationship of law and morality in such fields as immoral contracts, fraud, unjust enrichment, and civil responsibility.

Causa

The general questions relative to consensual obligations, such as consent, capacity, and certainty of object, are all adequately dealt with in different works on obligations or in their appropriate places in the general treatises on civil law. Some reference should be made, however, to the literature dealing with the elusive *théorie de la cause* which has received special treatment in several excellent works in addition to that contained in practically every treatise from Toullier down to present times. The starting point is the Civil code which treats of *causa* in articles 1108, and 1131 to 1134. These articles provide, among other things, that a contract without a *causa* or based upon a false or illicit *causa* is invalid, but the term itself is not defined. A common-law lawyer might be tempted to define it in terms of consideration, but it has a broader meaning. In an important work by Professor Capitant, *De la cause*,[67] recently

[65] Saleilles, R. Étude sur la théorie générale de l'obligation d'après le premier projet de Code civil pour l'Empire allemand. 3. éd. Pichon et Durand-Auzlas, 1914. Reprint 1923. 476 p.

[66] Ripert, G. La règle morale dans les obligations civiles. Paris, Librairie générale de droit & de jurisprudence, 1925. 398 p.

[67] Capitant, H. De la cause des obligations. 3. éd. Paris, Dalloz, 1927. 506 p.

published in a third edition, the learned writer distinguishes between the purpose of the contract and the motives of the parties to the contract, the former being the *causa* of the contract. This conception has been dealt with, with variations, in a number of recent theses. The more important are *Volonté et cause*[68] by P.-Louis-Lucas, *La notion d'équivalence*[69] by Maury, *La cause dans les libéralités*[70] by Hamel, and *La cause dans les actes à titre onéreux*[71] by Ionasco. Another important thesis is that of Dabin, *La théorie de la cause.*[72] Attention should be called to the fact that a number of present-day writers look upon *causa* as a useless conception, the mention of which might easily be dispensed with without causing particular harm to the law of obligations (*cf.* Planiol, *Traité élémentaire*, v. 2, p. 372 *et seq.*). In this connection mention should be made of an article, *Causa and consideration*, in the Yale Law Journal for 1919 (v. 28, p. 621), in which Professor Lorenzen, after reviewing civil law authorities, comes to the conclusion that "there is in reality no definable 'doctrine' of *causa*."

Torts

An examination of the provisions of the Code relating to delicts and quasi delicts (arts. 1382 to 1386) reveals surprisingly few provisions concerning the general field of law which common-law lawyers designate under the term "torts." Nevertheless, as in the common law, private wrongs occupy an important place in French law and legal literature. Attention has been called to the present tendency of modern

[68] Louis-Lucas, P. Volonté et cause. Étude sur le rôle respectif des éléments générateurs du lien obligatoire en droit privé. Paris, Recueil Sirey, 1918. 320 p.

[69] Maury, J. Essai sur le rôle de la notion d'équivalence en droit civil français. Paris, Jouve, 1920. 2 v.

[70] Hamel, J. La notion de cause dans les libéralités. Étude de la jurisprudence français et recherche d'une définition. Paris, Recueil Sirey, 1920. 392 p.

[71] Ionasco, T. R. L'évolution de la notion de cause dans les conventions à titre onéreux. Paris, Les Presses Universitaires de France, 1923. 189 p.

[72] Dabin, J. La théorie de la cause. Étude d'histoire et de jurisprudence. Paris, Recueil Sirey; Bruxelles, P. Van Fleteren, 1919. 334 p.

writers to deal with torts as a part of sources of obligations. This plan is followed by Professor Demogue, who deals extensively with torts in his general work on obligations. Professor Demogue is also the author of an earlier work on torts, *De la réparation civile des délits*,[73] and has written two articles for American reviews—*Fault, risk, and apportionment of risk*, 15 Illinois Law Review 369, and *Validity of the theory of compensatory damages*, 27 Yale Law Journal 585. In addition delictual responsibility received important treatment in Sourdat's *Traité général de la responsabilité*,[74] published in a sixth edition in 1911.

Attention might also be called here to a text on civil responsibility, *Responsabilité civile*,[75] published by Professor Lalou in the early part of 1927. This work, devoted principally to delictual responsibility, deals with the general principles of liability. In addition, Professor Lalou discusses responsibility for one's own acts, for acts of another, including acts of minor children, and for damages caused by animals and inanimate objects. He also gives some discussion of the Workmen's compensation act and state responsibility.

An interesting evolution in civil responsibility is to be found in the development of liability for, to put it somewhat paradoxically, an illegitimate exercise of a so-called legal right or privilege (*abus des droits*). The general problems arising out of abuse—similar to those raised in the spite-fence cases, Allen *v.* Flood (Law reports, Appeals, 1, 1898), and Tuttle *v.* Buck (107 Minn. 145, 1909), in England and this country—are not infrequently dealt with in works on civil law. An excellent work specially devoted to the subject is *L'esprit des droits* [76] by Professor Josserand, dean of the Lyon Law School. French doctrines are also

[73] Demogue, R. De la réparation civile des délits (Études de droit et de législation). Paris, Rousseau, 1898. 366 p.

[74] Sourdat, A. Traité général de la responsabilité ou de l'action en dommages interêts en dehors des contrats . . . 6. éd., rev. par. L. Sourdat. Paris, Marchal et Billard, 1911. 2 v.

[75] Lalou, H. La responsabilité civile. (Principes élémentaires et applications pratiques.) Paris, Dalloz, 1927. 479 p.

[76] Josserand, C. De l'esprit des droits et de leur relativité. Théorie dite de l'abus des droits. Paris, Dalloz, 1927. 426 p.

dealt with in a short but instructive article by M. S. Amos which appears in the Journal of the Society of Comparative Legislation for 1900 (p. 453 *et seq.*).

Various other individual problems relating to wrongs have received excellent treatment in a large number of theses, of which only a few of the more recent can be mentioned here. Of those dealing with the elements of delictual responsibility, particularly with reference to fault, probably the best are Fromageot's *De la faute comme source de la responsabilité*,[77] Bosc's *Essai sur les éléments constitutifs du délit civil*,[78] Degand's *La faute*,[79] Bettremieux' *Essai historique et critique sur le fondement de la responsabilité civile*,[80] Légal's *De la négligence et de l'imprudence*,[81] Meignié's *Responsabilité et contrat*,[82] and Triandafil's *L'idée de faute et l'idée de risque*.[83] Mention should also be made of two interesting theses on causation, Guex' *La relation de cause à effet* [84] and Marteau's *La causalité dans la responsabilité civile*.[85] The evolution of civil responsibility is dealt with in Muguet's *L'idée de responsabilité civile, son évolution*.[86]

Property
Possession

There is no general work of importance on property, but the entire subject is adequately dealt with in the treatises

[77] Fromageot, H. De la faute comme source de la responsabilité en droit privé. Paris, Rousseau, 1891. 276 p.

[78] Bosc, J. Essai sur les éléments constitutifs du délit civil. Paris, Rousseau, 1901. 273 p.

[79] Degand, M. Étude synthétique et critique des principales théories modernes sur le rôle de la faute. Lille, 1912. 180 p.

[80] Bettremieux, P. Essai historique et critique sur le fondement de la responsabilité civile en droit français. Lille, 1921. 208 p.

[81] Légal, A. De la négligence et de l'imprudence comme source de responsabilité civile délictuelle. Paris, Jouve, 1922. 225 p.

[82] Meignié, M. Responsabilité et contrat. Essai d'une délimitation des responsabilités contractuelles et délictuelles. Lille, Robbe, 1924. 288 p.

[83] Triandafil, E. L'idée de faute et l'idée de risque comme fondement de la responsabilité. Paris, Rousseau, 1914. 228 p.

[84] Guex, R. La relation de cause à effet dans les obligations extra-contractuelles. Lausanne, de C. Pache, 1904. 190 p.

[85] Marteau, P. La notion de la causalité dans la responsabilité civile. Aix, 1914. 260 p.

[86] Muguet, G. L'idée de responsabilité civile, son évolution. Paris, 1922. 87 p.

on civil law. Reference should be made, however, to an important study of French and German theories of possession of movables [87] by the eminent Professor Saleilles, who wrote extensively on German civil law. Important works on German civil law, by the same writer, and not already mentioned, are indicated in a note.[88]

Succession

Likewise, the general rules of testate and intestate succession receive their best treatment in the general treatises on civil law. Mention might be made of the fact that testate succession is usually dealt with in connection with gifts, thus following the order of the Civil code (arts. 901–1100). *An essay on intestate succession*, in English,[89] was published by Barthelemy Colin in 1876. While it gives some idea of French law and the various theories of intestate succession, due to its age, its present value is doubtful. A very good English summary of the French law of wills and probate was published by Pierre Pellerin [90] in 1920. The portion dealing with death duties has been largely superseded by subsequent legislation. Attention should be called to a valuable article on *Civil law substitutes for trusts* by Pierre Lepaulle, lecturer on comparative law at the University of Paris (36 Yale Law Journal, 1126).

COMMERCIAL LAW

Commercial Code

The principal sources of the present rules of law governing commercial transactions are the Commercial code, as

[87] Saleilles, R. De la possession des meubles; études de droit allemand et de droit français. Paris, Pichon et Durand-Auzias, 1907. 351 p.

[88] Saleilles, R. Introduction à l'étude du droit civil allemand. Paris, Pichon, 1904. 124 p.

Idem. De la déclaration de volonté; contribution à l'étude de l'acte juridique dans le Code civil allemand. Paris, Pichon, 1901. 421 p. Reprint 1929. 423 p.

[89] Colin, B. H. An essay on intestate succession according to the French code. London, Stevens & Sons, 1876. 153 p.

[90] Pellerin, P. The French law of wills, probate, administration and death duties. Of the estates of Englishmen leaving property in France. 2d ed. London, Stevens & sons; Paris, The author, 1920. 90 p.

modified by subsequent legislation, legislation antedating the adoption of the code and the Civil code.

Prior to 1808 when the Commercial code went into effect commercial transactions were mainly governed by the legislation of Louis XIV as contained in the commercial and maritime ordinances of 1673 and 1681, already mentioned in the chapter on legal history. As early as 1787 a commission was appointed to revise the existing legislation but the political events which followed interrupted its work. While the Constituent Assembly announced its intention to proceed with the codification of both civil and commercial law, no definite steps were taken with respect to commercial law until 1801, when a commission of seven members was appointed under the Consulate to prepare a Commercial code. Although a project was presented to the Government by Chaptal, Minister of the Interior, in December of the same year, the general plan was left in abeyance until 1806 when a financial crisis brought about a number of failures, which again brought to the fore the need for revision of the commercial laws. Study of the original plan was revived and the text was ultimately transformed into law through the same legislative processes as were followed in the adoption of the Civil code with the result that it went into effect on January 1, 1808, after having been definitely voted on during the course of 1807.

It might be stated in passing that the history of the adoption of the Commercial code is summarized in the different manuals on commercial law. Good discussions may be found in those by Thaller and Percerou and Lyon-Caen and Renault and in the treatise by Professors Lyon-Caen and Renault.

Contents

The Commercial code which is, of course, the basic source of French commercial law, comprises 648 articles and is divided into four books which in turn are divided into titles, chapters, and sections.

The first book, comprising articles 1 to 189, is entitled *Du commerce en général* and deals with traders, the books of traders, commercial associations, the publication of the marriage contract of traders, brokers, factors, commercial sales, bills of exchange, and promissory notes.

The second book, comprising articles 190 to 436, deals with maritime commerce (*infra*).

The third book, comprising articles 436 to 615, deals with insolvency and bankruptcy (*infra*).

The fourth book, comprising articles 615 to 648, deals with the organization of commercial courts.

There have been two official editions of the Commercial code, that of its promulgation and a second and last in 1841.

Private Editions

Like those of the Civil code, private editions vary in size and manner of treatment. There are three important annotated editions. Those sold by Dalloz [91] and the *Recueil Sirey* [92] are equally valuable and are usually considered to be better than that published by Marchal and Godde [93] and sometimes cited under the name Sirey. That published by Dalloz consists of one volume published in 1878, a supplement published in 1896, and "*additions complémentaires*" published in 1905. Like the annotated Civil code of the same publishers, it is annotated to both doctrine and jurisprudence. That sold by the *Recueil Sirey* consists of two volumes which were prepared between 1903 and 1906 under the direction of Professor Cohendy, of Lyon, and Alcide Darras.

There are a number of small pocket editions. That published by Dalloz [94] and belonging to the series, *Petite collection Dalloz*, seems to be the best. In addition to the Code, it contains all the important subsequent legislation relating to commercial matters and short annotations to court decisions. The pocket edition published by Sirey,[95] one of the *Petits codes Carpentier*, is also important.

There are several English translations. Unfortunately they are all comparatively old and for that reason fail to

[91] Dalloz. Les codes annotés d'après la doctrine et de la jurisprudence: Code de commerce. Paris, Dalloz, 1877. 1,086 p. Supplément. 2. éd. 1896–1905. 1,041 p.

[92] Cohendy, E., et Darras, A. Code de commerce annoté. Paris, Larose, 1903–08. 2 v.

[93] Sirey, J., et Sirey, C. Les codes annotés de Sirey: Code de commerce. 4. éd. Paris, Marchal et Godde, 1910. 2 v.

[94] Dalloz. Code de commerce, édition 1928. Paris, Dalloz. 652 p.

[95] Carpentier, A. Code de commerce, édition 1927. Paris, Recueil Sirey. 719 p.

take into account later legislative developments. The best seems to be that of Sylvain Mayer,[96] published in 1887. There is also a good translation in Goirand's English *Treatise on French commercial law.*[97]

Civil Code and Commercial Law

As might be expected different parts of the Commercial code have been amended from time to time to meet changing economic conditions. Nevertheless, its provisions are not always adequate to meet present-day legal problems, either because of total lack of applicable provisions or because of insufficient treatment. In such cases, following a theory that the Commercial code is exceptional and the Civil code the fundamental basis of French private law, it is necessary to have recourse to the latter to supplement the defects of the Commercial code. In the case of partnerships it is expressly provided that the Civil code is to govern in the absence of applicable provisions in the Commercial code. (Com. c. 18, Civ. c. 1873.) But in other instances, such as commercial sales, which are inadequately dealt with in the Code, or insurance other than marine, which is not touched upon at all, it is presumed that the general provisions of the Civil code were intended to supplement those of the Commercial code.

Legislation Prior to the Code

The act of September 15, 1807, which fixed the date when the Commercial code would become effective, expressly repealed all anterior laws dealing with matters touched upon in the new Code. By implication those subjects not dealt with are still governed by preexisting laws. Although referred to in works on commercial law their number is limited and comparatively unimportant.

Commentaries Treatises

Turning now to the general treatises on commercial law we find that the evolution in method of treatment was much the same as that in the treatment of civil law. The earlier works were largely commentaries while those of to-day are treatises which follow the same method of treatment to be found in present-day works on civil law.

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[96] Mayer, S. The French Code of commerce, as revised to the end of 1886. London, Butterworths, 1887. 307 p.

[97] Goirand, L. A treatise upon French commercial law and the practice of all the courts. 2. ed. London, Stevens & Sons; New York, Baker, Voorhis & co., 1898. 894 p.

Most of the older works are no longer of importance but there are several which though not often consulted are worthy of mention. Of the earlier commentators Pardessus should be classed among the first. His important work, *Cours de droit commercial*,[98] first appeared in 1814–1816 and was published in a sixth edition by Rozière in 1857. Another important earlier work is that of Delamarre and Le Poittevin which was published in a second edition in 1861. The first edition was published under the title *Contrat de commission ou des obligations conventionnelles en matière commerciale* and the second under the title *Traité théorique et pratique de droit commercial*.[99] A somewhat later commentary is that of Bédarride, *Droit commercial. Commentaire du code de commerce*.[1] It is interesting to note that

[98] Pardessus, J. Cours de droit commercial. 6. éd. par de Rosière. Paris, Plon, 1857. 4 v.

[99] Delamarre, E., et Le Poitevin. Traité théorique et pratique de droit commercial. 2. èd. Paris, Hingray; Plon, 1861. 6 v.

[1] Bédaridde, J. Droit commercial. Commentaire du Code de commerce:

Des commerçants; Des livres de commerce. 2. éd. Paris, Durand et Pedone-Lauriel, 1872. 542 p.

Des sociétés. 2. éd. 1894. 636 p.

Des bourses de commerce. 2. éd. 1894. Reprint 1921. 666 p.

Des commissionaires. 2. éd. 1894. 636 p.

Achats et ventes. Nouv. éd., par B. Abram. Paris, Larose et Tenin, 1909. 423 p.

De la lettre de change. 2. éd. Aix, Makaire, 1894. 2 v.

Du commerce maritime. 2. éd. 1894. Reprint 1920. 5 v.

Des faillites et banqueroutes. 5. éd. 1874. 3 v.

De la juridiction commerciale. 2. éd. 1891. Reprint 1920. 584 p.

Commentaire de la loi du 14 Juin, 1865, sur les cheques. Paris, Durand et Pedone-Lauriel, 1874. Reprint 1920. 302 p.

Commentaire des lois sur les brevets d'invention—marques de fabrique. Aix, Makaire, 1868. 3 v.

Commentaire de la loi du 10 décembre, 1874, sur l'hypothèque maritime. 1886. 536 p.

Questions de droit commercial et de droit civil, avec leurs solutions. Reprint 1924. 396 p.

Traité du dol et de la fraude en matière civile et commerciale. 4. éd., rev. par. A. Rivière. Paris, Chevalier-Marescq, 1887. 4 v.

Commentaire de la loi du 24 juillet, 1867, sur les sociétés. Aix, Makaire, 1856. Reprint 1877. 2 v.

a number of the volumes included within this latter commentary have been recently reprinted. It should be remarked, however, that their value is far from being the equal of that of the two important collections or treatises which have appeared within the past few years. Another important older work is Bravard-Veyrières' treatise.[2] A second edition was annotated and republished by Professor Demangeat in 1886–92.

The popular modern treatise, particularly with lawyers, is that of Professors Lyon-Caen and Renault, both of the Paris Law School, *Traité de droit commercial*,[3] consisting of eight volumes covering practically the entire field of commercial law. The first volume contains a short history of commercial law and, in addition, deals with commercial transactions, traders, commercial courts, labor courts and chambers of commerce. The second volume, in two parts, deals with the different possible business associations under French law. The third deals with general rules concerning commercial contracts and treats in particular of proof in commercial matters, sales, pledges, warehouses, warehouse receipts, commissions and transportation. The fourth volume deals with commercial effects, including bills of exchange, promissory notes and checks, banking operations and transactions on exchanges. The fifth and sixth are devoted to maritime law and the seventh and eighth to insolvency and bankruptcy.

Another equally important work is the *Traité général théorique et pratique*,[4] which was originally published un-

[2] Bravard-Veyrières, P. Traité de droit commercial, publié et annoté par C. Demangeat. 2. éd. Paris, Plon; Chevalier-Marescq, 1886–92. 6 v.

[3] Lyon-Caen, C., et Renault, L. Traité de droit commercial. Paris, Librairie générale de droit et de jurisprudence. Vols. 1, 3, and 4. 5. éd. 1921–25. Vols. 2, 5, 6, 7, and 8, 4. éd. 1908–15.

[4] Thaller, E. Traité général théorique et pratique de droit commercial. Paris, Rousseau. The following treatises have been published:

Pic, P. Des sociétés commerciales. 2. éd. 1925–26. 3 v.
Josserand, L. Du contrat de transport. 2. éd. 1926. 1 v.
Ripert, G. Du droit maritime. 2. éd. 1922–23. 3 v.
Percerou, J. Des faillites, banqueroutes et liquidations judiciaires. 1907–13. 2 v.

der the direction of Professor Thaller, of Paris, but is at present under that of Professor Percerou, also of Paris. The general plan is that followed in the treatise on civil law published under the direction of Professor and Dean Baudry-Lacantinerie, of Bordeaux. Instead of representing the work of one or two legal publicists it consists of a number of separate treatises written by eminent members of various faculties. At present the collection consists of an important work on commercial associations, *Les sociétés commerciales*, by Professor Pic, of Lyons; a treatise on transportation, *Les transports*, by Professor Josserand, dean of the Lyon Law School; an outstanding work on maritime law, *Droit maritime*, by Professor Ripert, of Paris, and an important treatise on bankruptcies, insolvency, and judicial liquidation, by Professor Percerou, also of Paris. Professor Roubier, of Lyons, is said to be preparing a treatise on industrial and literary property which will form a part of the collection. When completed the *Traité général* will cover the entire field of commercial law.

Turning now to the modern shorter works on commercial law, we find a larger field to choose from. While they are intended for the use of students, the more important are also of practical value. Of these the most popular is that of Professors Lyon-Caen and Renault, which was published in a fifteenth edition in 1928, under the title *Manuel de droit commercial*.[5] Unlike the other shorter treatises it also comprises maritime law. While perhaps not as popular, the *Traité élémentaire*[6] of Professor Thaller is equally valuable and scholarly. Mention should be made of the fact that the seventh edition represents a revision by Professor Percerou of the Paris Faculty. Other recent im-

[5] Lyon-Caen, C., et Renault, L. Manuel de droit commercial (y compris le droit maritime). 15. éd. Paris, Pichon et Durand-Auzias, 1928. 1,348 p.

[6] Thaller, E. Traité élémentaire de droit commercial à l'exclusion du droit maritime. 7. éd. rev. par. J. Percerou. . . . Paris, Rousseau, 1925. 1,360 p.

portant works comprise the *Précis de droit commercial*,[7] by Professor Lacour, Professor of commercial law at the University of Lille, and Dr. Bouteron, and the *Précis théorique et pratique*,[8] by Professor Wahl, of Paris. The former consists of four volumes, the third and fourth of which are devoted to judicial decisions pertaining to commercial matters. Professor Wahl's *Précis* is particularly interesting because of its critical study of the application of the provisions of the Commercial code to present-day problems. Older manuals include those of Professors Bravard-Veyrières [9] and Boistel.[10]

An important periodical devoted entirely to commercial law is the *Annales de droit commercial et industriel français*, which was founded by Professor Thaller in 1886 and is now published under the direction of Professor Percerou.

Before taking up the literature devoted to particular topics falling within the scope of commercial law, attention should be called to two works in English, *A treatise upon French mercantile law and the practice of the courts* [11] published by Napoleon Argles in 1882 and *French commercial law and the practice of the courts* [12] published by Leopold Goirand in 1898. The latter, which includes maritime law and the law of patents and trade-marks, seems to be the better piece of work, but as is often the case with English works on French law, it has not been revised, with the result that it fails to take into account later developments through legislation and court decisions.

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[7] Lacour, L., et Bouteron, J. Précis de droit commercial, non compris le droit maritime. 3. éd. Paris, Dalloz, 1925. 4 v. Supplement, 1928. 310 p.

[8] Wahl, A. Précis théorique et pratique de droit commercial. Paris, Recueil Sirey, 1922. 1,254 p.

[9] Bravard-Veyrières, P. Manuel de droit commercial. 7. éd. rev. par Demangeat. Paris, A. Marescq, ainé, 1868. 793 p.

[10] Boistel, A. Manuel de droit commercial. 3. éd. Paris, Fontemoing, 1899. 800 p.

[11] Argles, N. A treatise upon French mercantile law—accompanied by a new translation of the entire Code of Commerce. London, Waterlow bro[s] & Layton, 1882. 576 p.

[12] Goirand, L. A treatise upon French commercial law and the practice of all the courts. 2d ed. London, Stevens & sons; New York, Baker; Voorhis & co., 1898. 894 p.

Mention should be made of the fact that a résumé of certain parts of French commercial law is contained in a collection [13] published in 1915 by Archibald Wolfe, of the Department of Commerce, in collaboration with Professor Borchard, at the time law librarian of the Library of Congress. Important bulletins on foreign commercial laws are published from time to time by the Department of Commerce. Useful information as to commercial matters with a summary of French law may be found in the *Manual of French law* [14] published in 1902 by Cleveland Coxe, at one time deputy consul general in Paris.

French terminology as applied to the various associations recognized by law is not always easy to understand. For that reason it is believed that time taken for a preliminary explanation of terms may be well worth while.

Associations. Sociétés

In non-legal language the French terms *société* and *association* are often used interchangeably to denote any association of two or more persons for a common purpose. In a narrow legal sense the term *association* refers to associations organized for some purpose other than that of profit. In this sense it includes charitable, benevolent, and social organizations which until recently came within the purview of articles 291 and 292 of the Penal code forbidding the union of 20 or more persons without special authorization. These provisions of the Penal code were repealed by an enactment of July 1, 1901, which proclaimed the principle of liberty of association. On the other hand, the term *société* refers to associations organized for the purpose of gain. The latter did not come within the scope of the prohibition of the Penal code and were, and for that matter still are, governed by the Civil code (arts. 1832–1873), the Code of commerce (18–64), and subsequent legislation. In this narrow sense the term *société* comprises the French equivalents of partnerships, limited partnerships, and corporations or companies.

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[13] U. S. Dept. of Commerce. Commercial laws of England, Scotland, Germany, and France, by Archibald J. Wolfe in collaboration with Edwin M. Borchard. Washington, Govt. print. off., 1915. 127 p.

[14] Coxe, H. C. Manual of French law and commercial information. Paris, New York, Brentano's, 1902. 292 p.

Partnerships. Corporations

Sociétés or associations organized for profit are of two kinds, civil and commercial. The former, which are governed wholly by the Civil code (arts. 1832–1873), comprise universal and particular partnerships. The first seem to exist to-day in name only and include associations in which the members pool all of their property and profits therefrom or all of their earnings (Civil code, arts. 1836–1840). Particular partnerships are characterized by the union of two or more persons for profit with respect to a particular thing or noncommercial venture (Civil code, arts. 1841–1842). Comparatively, particular partnerships are few in number.

Commercial associations are governed primarily by the Commercial code (18–64) and subsequent legislation and, in the absence of applicable provisions in either, by the Civil code.

Article 19 of the Commercial code states that there are three kinds of commercial associations (*sociétés*) recognized by law: *Société en nom collectif*, *société en commandite*, and *société anonyme*. In reality there are four, since *sociétés en commandite* are divided into two catégories, the *société en commandite simple* and *en commandite par actions*.

Independently of the four categories of commercial associations designated under the term *sociétés*, the Commercial code also recognizes another type of association, *association en participation*. This type of association may exist with respect to one or more operations or with respect to an entire industry. Its main characteristics are its secrecy with respect to third parties and the fact that those who act for the association act in their own name. As between themselves the parties are governed by their contract, which alone constitutes the association.

Commercial Partnerships

The *société en nom collectif* resembles the common-law partnership. All of the members may participate in the management of the affairs of the firm and all are liable jointly and severally (*in solido*) for its debts.

Limited Partnerships

The *société en commandite simple* or as it is often called *par intérêt* resembles the statutory limited partnership of some of our states. It is characterized by two types of mem-

bers—one or more called *commandites* who manage the affairs of the concern and are personally liable for its debts, and one or more called *commanditaires* or *bailleurs de fonds* who take no part in the management and whose liability is limited to their financial interest.

The *société en commandite par actions* differs from the ordinary *société en commandite* in that the non-managing members are holders of transferable shares instead of having merely an interest in the concern.

Corporations. Companies

The *société anonyme* resembles the American stock corporation or English company. The members are not personally liable for debts, and the management of its affairs is delegated to directors.

Time can not be taken to discuss the numerous legislative changes of the last century in so far as they concern commercial associations in general. They are all noted in the various works on commercial law which have already been discussed and the special works on civil and commercial associations which will be referred to later. Due to its importance, reference might well be made here to the legislation governing *sociétés en commandite par actions* and *sociétés anonymes.*

Legislation. Limited Partnerships and Corporations

Adopting the theory of sovereign grant of corporate life, the Code originally provided for special governmental authorization for the formation of *sociétés anonymes* or corporations. At the same time the *société en commandite* was left free from governmental control. One of the results was that the period following the adoption of the Code was marked by a preponderance of *sociétés en commandite par actions.* Absence of regulation often led to abuses and fraud, and in 1856 the *Commandite par actions* was brought within governmental supervision. While special preliminary authorization was not required for formation, the amount and subscriptions to shares were strictly regulated. A step toward the abolition of the requirement of special preliminary governmental authorization for the formation of limited companies or corporations was taken in 1863 through the enactment of a law providing for the formation, without special charter, of companies with limited responsibility (*sociétés à responsabilité limitée*), having a capital not exceeding

20,000,000 francs. In 1867 the necessity for special authorization with respect to the formation of companies or corporations in general was done away with in an act of July 24 which permitted the formation of a corporation by an instrument under seal if the number of incorporators did not fall below seven (arts. 21 and 23). Other provisions of the same law strictly regulated the amount and subscriptions to shares of stock.

This act of 1867 as modified, notably in 1893, 1903, and 1913, is now the controlling legislation with respect to the formation of both *sociétés en commandite par actions* and *sociétés anonymes*. It should be noted that life insurance companies which are governed by the provisions of an act of March 17, 1905, as modified in 1921, were excepted from the terms of the act of 1867, and other insurance companies are regulated by certain additional provisions (*cf.* Decree of March 8, 1922). Financial associations were also brought within closer governmental control by subsequent legislation.

French legal literature concerning business associations is exceptionally abundant and the task of pointing out the works which seem to be the more valuable is difficult. The difficulty is enhanced by the fact that the manner of treatment varies. Certain works deal with both civil and business associations, others with commercial associations in general, and still others with particular kinds of commercial associations.

General Literature

Of those dealing with associations in general the outstanding treatise is that by Houpin and Bosvieux, *Traité général, théorique et pratique*,[15] a 3-volume work which was published in a sixth edition in 1927. Devoted to associations with and without profit-making purposes it is kept up to date by the *Journal des sociétés* (*infra*). A somewhat less valuable treatise covering the same subject matter is Vavasseur's *Traité des sociétés civiles et commerciales*,[16] a 2-volume work

[15] Houpin, C., et Bosvieux, H. Traité général théorique et pratique des sociétés civiles et commerciales et des associations. 6. éd. Paris, Journal des Notaires; Recueil Sirey, 1927. 3 v.

[16] Vavasseur, A. Traité des sociétés civiles et commerciales (avec formules) . . . 6. éd. Paris, Marchal & Godde, 1910. 2 v.

which was published in a sixth edition in 1910. The treatise by Houpin and Bosvieux besides being decidedly superior and having the advantage of later publication is probably the best existing practical guide to the different legal problems concerning partnerships and companies.

There are several important works dealing primarily with commercial associations, including partnerships and companies. Of these the best is the *Traité des sociétés commerciales*[17] by Professor Pic which forms a part of the *Collection Thaller*. Another important but less valuable work is that by Professor Arthuys, *Traité des sociétés commerciales*.[18] Reference is also sometimes made to Professor Rousseau's *Traité théorique et pratique des sociétés commerciales*[19] which was published in a fifth edition in 1921. This latter work, however, is not of the same general scholastic standard as those which have already been mentioned. Mention should also be made here of a recent short work dealing with the civil law and commercial associations, by Robert Desiry.[19a]

Most of the questions relating to particular kinds of commercial associations are adequately treated in the general treatises which have just been mentioned, but reference should be made to the recent 3-volume *Traité théorique et pratique des sociétés anonymes*[20] by Copper-Royer, dealing in particular with companies or stock corporations. Very valuable for its originality and interesting, this work, though perhaps not always dependable, contains the best individual treatment of *sociétés anonymes*. Reference is frequently made to a popular practical work by Decugis.[21] It deals

[17] Pic, P. Des sociétés commerciales. 2. éd. Paris, Rousseau, 1926. 3 v.

[18] Arthuys, A. Traité des sociétés commerciales. 3. éd. Paris, Recueil Sirey, 1916–17. 2 v. Formulaire par Lecouturier. 1919. 309 p.

[19] Rousseau, R. Traité théorique et pratique des sociétés françaises et étrangères. 5. éd. Paris, Rousseau, 1921. 2 v.

[19a] Desiry, R. Droit civil et sociétés commerciales. Paris. Rousseau, 1929. 357 p.

[20] Copper-Royer, E. Traité théorique et pratique des sociétés anonymes. 3. éd. Paris, Marchal et Godde; Dalloz, 1925. 3 v.

[21] Decugis, H. Traité pratique des sociétés par actions. 6. éd. Paris, Recueil Sirey, 1926. 984 p.

with both limited partnerships having transferable shares, and stock corporations.

Private Companies

Recent legislation (act of March 7, 1925) created a new form of limited company, similar to the English private company and characterized by the absence of negotiable shares, the interest of the members of the association being only transferable with the consent of a majority of the shareholders representing three-fourths of the capital stock. This new type of limited company (*société à responsabilité limitée*), not to be confused with that provided for in the act of 1863 (*supra*), has been the subject of two important commentaries, one by Professors Pic and Bartin, *Des sociétés è responsabilité limitée*,[22] published in 1927, and the other by Mr. Drouets, *Traité théorique et pratique des sociétés à responsabilité limitée*,[23] a second edition of which appeared in 1927.

Cooperatives

French legislation concerning cooperative associations is usually touched upon in the general works on commercial law. Very good summaries may be found in the manuals by Professors Lyon-Caen and Renault and by Professors Thaller and Percerou. In addition an excellent account of the legislation up to 1919 is contained in a thesis by Nast, *Le régime juridique des coopératives*.[24]

De Facto Corporations

Before turning to the status of foreign corporations and companies in France reference should be made at this point to an important work by Professor Hémard of Paris, *Théorie et pratique des nullités de sociétés et des sociétés de fait*.[25] Published in a second edition in 1926, it deals with *de facto* companies and the effect of failure to comply with

[22] Pic, P., et Bartin, F. Des sociétés à responsabilité limitée. Étude critique et commentaire pratique de la loi du 7 mars 1925. Paris, Juris-classeurs, 1927. 707 p.

[23] Drouets, G. Traité théorique et pratique des sociétés à responsabilité limitée. 2. éd. Paris, Recueil Sirey, 1927. 645 p.

[24] Nast, A. Le régime juridique des coopératives. Paris, Jouve & c[ie], 1919. 296 p.

[25] Hémard, J. Théorie et pratique des nullités de sociétés et des sociétés de fait. Étude de jurisprudence et de droit comparé. 2. éd. Paris, Recueil Sirey, 1926. 1,009 p.

the positive provisions of the act of 1867 in the formation of *sociétés en commandite par actions* and *sociétés anonymes.*

Foreign Corporations

With the expansion of American business beyond the confines of the United States the conditions under which American business associations may trade in foreign countries has become of growing importance. The increase in the number of American corporations doing business in France has made the question of the status of foreign corporations and firms in that country one of peculiar interest to American lawyers and business men.

While foreign partnerships were always permitted to do business in France under the same conditions as individuals, prior to 1857 foreign corporations were required to obtain special governmental authorization. In a law of that year (May 30) enacted as the result of difficulties with Belgium arising out of the exclusion of French limited companies from the latter country, Belgian corporations and other commercial, industrial, or financial associations were permitted to do business in France under the sole condition that they conform to French law. The second article of the same law made provision for the extension through ministerial decree of the privileges enjoyed by Belgian associations to those of other countries. American corporations were permitted to do business without preliminary governmental authorization as the result of a decree of August 6, 1882. English companies, however, derive the privilege of doing business from a treaty of June 30, 1862.

The privileges and duties of American corporations in France are dealt with by Charles Loeb, an American lawyer practicing in Paris, in a recent work entitled *Legal status of American corporations in France.*[26] In addition to a discussion of French law with respect to associations in general and corporations and companies in particular, Mr. Loeb's book gives excellent translations of all French legislation concerning corporations. There are several other works in English dealing with French corporation law and foreign corporations in France. A practical handbook for lawyers

[26] Loeb, Ch. Legal status of American corporations in France. Paris, Lecram, 1921. 534 p.

and business men was published by Pierre Pellerin [27] in 1920. A short treatise by Leopold Goirand [28] appeared in 1902 and English companies in France were dealt with by Thomas Barclay [29] in 1899.

The status in France of foreign companies generally is dealt with in French works on commercial law and business associations as well as in important treatises on private international law. In addition, the subject received scholarly treatment in Professor Pillet's *Les personnes morales en droit international privé*,[30] a work which deals not only with business associations but with the various conflict of laws problems which concern all types of juristic persons.

Issue and Negotiation of Foreign Securities

Closely related to the question of the ability of foreign associations to do business in France is that of the issue and negotiation in France of securities of foreign companies and corporations. Besides the treatment received in the different texts on commercial law this important and complicated question has been dealt with in several individual works. The most recent, and generally considered the best, is Lagarde's *L'émission de titres en France*.[31] Reference is also sometimes made to a thesis by Paul Dauphin, *Émission et circulation des titres des sociétés étrangères*.[32] Some discussion may also be found in Mr. Loeb's book.

Nationality

The question of the nationality of companies has given French courts and writers considerable difficulty. Prior to the World War the generally accepted doctrine, at least in so far as jurisprudence was concerned, was that the nation-

[27] Pellerin, P. French company law (sociétés anonymes); a practical handbook for lawyers and business men. London, Stevens & sons, 1920. 159 p.

[28] Goirand, L. A treatise upon the French law relating to English companies carrying on business in France. London, Stevens & sons, 1902. 112 p.

[29] Barclay, T. Companies in France; the law relating to British companies and securities in France and the formation of French companies. 2d ed. London, Sweet & Maxwell, 1899. 160 p.

[30] Pillet, A. Des personnes morales en droit international privé; sociétés étrangères. États, etc. Paris, Recueil Sirey, 1914. 434 p.

[31] Lagarde, G. L'émission de titres en France par des sociétés de commerce étrangères. Paris, Recueil Sirey, 1926. 424 p.

[32] Dauphin, B. P. Émission et circulation des titres des sociétés étrangères en France. Paris. 1907. 146 p.

ality of a corporation depends on the place of its principal business (*siège social*) as evidenced by the general management and stockholders' meetings. In determining the enemy character of companies during the war, however, the courts adopted as a test the control of the company, following somewhat the British view in Daimler Co. *v.* Continental Tyre and Rubber Co. (L. R. (1916) 2 A. C. 307), adopted also in article 297 of the Treaty of Versailles. (*See* Clunet, 1917, 226, for an example of the application of this view.) Mr. Loeb, in the work just mentioned (p. 21), states that two other views have from time to time been advanced by different writers, namely, that nationality depends on the law of the place of incorporation, or, on that of the place where the principal business interests of the corporation are located.

French writers on commercial law as well as those who deal specifically with business associations devote some space to this interesting and difficult problem. In addition, it has been the subject matter of a number of theses. The best of those published after the war is, perhaps, Cuq's *La nationalité des sociétés*,[33] an excellent comparative study of both jurisprudence and legislation. Another good study is that of Leven which first appeared in 1900 as a thesis and was recently republished in a second edition under the title *La nationalité des sociétés et le régime des sociétés étrangères en France*.[34] This latter work gives a very good account of the French regulations concerning foreign companies doing business in France. Pépy's *La nationalité des sociétés*[35] is also important and reference is often made to a similar thesis by Gain.[36]

Before leaving the general subject of business associations mention should be made of the important periodicals: *Journal des sociétés*, *Revue des sociétés*, and *Gazette des sociétés*.

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[33] Cuq, M. La nationalité des sociétés. Étude de jurisprudence et de législation comparées. Paris, Recueil Sirey, 1921. 192 p.

[34] Leven, M. De la nationalité des sociétés et du régime des sociétés étrangères en France. 2. éd. Paris, Rousseau, 1925. 480 p.

[35] Pepy, A. La nationalité des sociétés. Paris, Recueil Sirey, 1920. 310 p.

[36] Gain, R. La nationalité des sociétés avant et depuis la guerre de 1914–1918. Paris, Dalloz, 1924. 250 p.

Exchanges

Exchanges, including stock and commodity exchanges, are governed primarily by the Commercial code (arts. 71–90), as well as by a number of subsequent laws and decrees. In addition, they are to some extent affected by legislation antedating the adoption of the Code.

While the general literature dealing with exchanges is exceedingly abundant, that which appears to be worthy of mention is comparatively small. Probably the best general discussions are to be found in the treatise on commercial law by Professors Lyon-Caen and Renault and the shorter works on commercial law, such as the manual of the same writers and that of Professors Thaller and Percerou. Though somewhat old the *Traité théorique et pratique des opérations de Bourse*,[37] by Buchère, is often referred to. Reference is also sometimes made to a later work on financial and exchange transactions in general, *Traité pratique de droit financier, banques, bourses de commerce*,[38] by Rousseau and Gallié. Stockbrokers, their privileges and duties, was the subject of an excellent study by Waldmann, *La profession d'agent de change*,[39] published in 1910. In addition, the negotiation on exchanges of registered shares was dealt with in a short work by Bézard-Falgas, *De la négociation en Bourse des titres nominatifs*,[40] published in 1921. Attention should also be called to the fact that the portion of Bédarride's treatise dealing with exchanges was recently reprinted.[41]

Transfer of Shares. Lost and Stolen Shares

In this connection mention should also be made of two valuable works by Bézard-Falgas dealing, respectively, with the loss and restitution of shares made out to bearer and questions relating to contests over the transfer of shares and bonds which have been stolen, lost, or destroyed. The

[37] Buchère, A. Traité théorique et pratique des opérations de Bourse. 3. éd. Paris, Plon; Chevalier-Marescq, 1892. 850 p.

[38] Rousseau, R., et Gallié, L. Traité pratique de droit financier, banques, bourses de commerce, valeurs et marchandises. 2. éd. Paris, Rousseau, 1924. 2 v.

[39] Waldmann, A. La profession d'agent de change, ses droits et ses responsibilités. 2. éd. Paris, Pichon et Durand-Auzias, 1910. 697 p.

[40] Bézard-Falgas, J. De la négociation en Bourse des titres nominatifs. Paris, Pichon, 1921. 21 p.

[41] Bédarride, J. Des bourses de commerce. 2. éd. Aix, Makaire, 1894. Reprint, 1921. 666 p.

first, a comparative study of French and foreign law, was published in 1923 under the title *Traité de la perte et de la restitution des titres au porteur*[42] and the second in 1908 under the title *Le contentieux des oppositions sur titres d'actions et d'obligations.*[43] Another important work by the same writer is his *Contentieux des transferts*,[44] recently published in a third edition. It deals with controversies arising out of transfers of registered shares.

While relatively not as important as some of the other topics falling within the scope of commercial law, it is believed that the general literature dealing with *fonds de commerce*, which might be freely translated, a commercial establishment, including the concepts "going concern" and "good will," as well as "stock in trade," is of sufficient importance to be mentioned. The legal nature of *fonds de commerce* was dealt with in an important thesis by Gombeaux, *Notion juridique du fonds de commerce.*[45] In addition, the important act of March 17, 1909, which, as modified by subsequent legislation, makes provisions for the sale and mortgage of *fonds de commerce*, received treatment in a very good work by Montier and Faucon which was published in a third edition in 1914 under the title *De la vente et du nantissement des fonds de commerce.*[46] An important general treatise on the subject is that by Boutaud and Chabrol, *Traité général des fonds de commerce.*[47] Cendrier's

[42] Bézard-Falgas, J. Traité de la perte et de la restitution des titres au porteur, français et étrangers. Paris, "Juris-classeurs," 1923. 632 p.

[43] Bézard-Falgas, J. Le contentieux des oppositions sur titres d'actions et d'obligations; saisie des titres, titres perdus, volés ou detruits. Paris, Pichon et Durand-Auzias, 1908. 367 p.

[44] Bézard-Falgas, J. Traité théorique et pratique du contentieux des transferts d'actions et obligations nominatives. 3. éd. Paris, Librairie générale de droit et de jurisprudence, 1924. 765 p.

[45] Gombeaux, E. La notion juridique du fonds de commerce. Paris, Rousseau, 1902. 322 p.

[46] Montier, F., et Faucon, G. De la vente et du nantissement des fonds de commerce. 3. éd. Paris, Rousseau, 1914. 365 p. Supplément, 1918.

[47] Boutard, E., et Chabrol, P. Traité général des fonds de commerce et de l'industrie, avec formulaire. Nouv. éd. Paris, Rousseau, 1910. ii, 662, 112 p.

Traité général,[48] recently published in a fourth edition, is also important.

Transportation. Inland Navigation

Unlike her continental neighbors, Belgium and Germany, France has no general legislation dealing specially with the important subject of inland navigation. A project for the codification of the rules relating to the subject, which are independent of those dealing with maritime commerce, has been proposed, but for the time being the regulations, in so far as the contract between carrier and shipper are concerned, are those which relate to carriers in general. These regulations are contained in the Civil code (arts. 1782–1786) under the title *Des voituriers par terre et par eau* and in the Code of commerce under the titles *Des commissionnaires pour les transports par terre et par eau* (arts. 96–102) and *Du voiturier* (arts. 103–107). While adopted at a time when modern means of transportation were not thought of, these provisions are sufficiently broad to permit their application to all forms of transportation.

Railways

In addition to the general provisions just mentioned, railways are governed by a number of laws and decrees, including a fundamental law of July 15, 1845, by the special regulations contained in the charters or operating concessions to particular roads and by the official tariffs established with the consent of the minister of public works.

Aerial Navigation

Aerial navigation is governed by an important act of May 31, 1924, which might almost be called a code. This act is divided into five titles dealing with airships—their nationality, ownership and mortgage, the circulation of airships, transportation, damage and responsibility, and certain penal dispositions.

The outstanding work on transportation in general, including transportation of passengers as well as merchandise, is Professor Josserand's *Les transports, en service intérieur et en service international*.[49] A part of the *Collection*

[48] Cendrier, G. Le fonds de commerce, traité général théorique et pratique. 4. éd. Paris, Dalloz, 1926. 705 p.

[49] Josserand, C. Les transports, en service intérieur et en service international (transports ferroviaires, roulage, navigation intérieure et navigation aérienne) à l'exclusion des transports maritimes. 2. éd. Paris, Rousseau, 1926. 1,137 p.

Thaller, it was published in a second edition in 1926. In addition to dealing with internal and international transportation, it also discusses all forms of carriage, including that by air and by rail and inland navigation. A good but less valuable work, confined to inland transportation, is Roger's *Manuel théorique et pratique des transports*.[50] Reference is also sometimes made to Duverdy's *Traité du contrat de transport*,[51] a much older treatise, which deals with land transportation, particularly by rail. Another old work which is often cited is Sarrut's *Législation et jurisprudence sur le transport*.[52] This latter text is confined to carriage of goods by rail. Mention should also be made of a practical manual of a popular nature published by Lamy in 1924 under the title *Manuel pratique des transports par chemins de fer*.[53] This work, while confined to rail transportation, comprises carriage of passengers and merchandise. Attention should be called to the fact that matters relating to public administration of railways are usually discussed in works on administrative law.

International Transportation

International transportation by rail was dealt with in a recent work by Professor Brunet and Doctors Durand and de Fourcauld, *Les transports internationaux par voie ferrée*.[54] While perhaps not as valuable as Professor Josserand's treatment of the same subject this text is also of importance.

Negotiable Paper

The law of bills of exchange and promissory notes is contained in the eighth title of the first book (arts. 110–189) of the Commercial code. The law relating to checks forms the subject matter of separate legislation, an act of June 14, 1865, as modified by subsequent enactments.

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[50] Roger, R. Manuel juridique, théorique et pratique des transports (droit maritime excepté). Paris, Rivière, 1922–24. 2 v.

[51] Duverdy, D. C. Traité du contrat de transport par terre en général et spécialement par chemins de fer. 2. éd. Paris, Chaix, 1874. 483 p.

[52] Sarrut, L. Législation et jurisprudence sur le transport des marchandises par chemins de fer. Paris, Chaix, 1874. 636 p.

[53] Lamy, L. Manuel pratique des transports par chemins de fer, voyageurs, marchandises et objets de toute nature. 10. éd. Paris, Recueil Sirey, 1924. 506 p.

[54] Brunet, R., Durand, P., et de Fourcauld. Les transports internationaux par voie ferrée. Paris, Recueil Sirey, 1927. 949 p.

Professors Lyon-Caen and Renault give an interesting account of the steps leading up to the legislation of 1865. (*Manuel*, p. 654 *et seq.*) The use of bank deposits in France for checking purposes has always been less general than in Anglo-American jurisdictions. Their use was particularly limited prior to 1865. But with the establishment of credit institutions some means for the transfer of funds had to be found. The logical method would naturally have been that employed in England, a draft on the bank, payable to order or bearer. Such a draft was subject, however, to a proportional tax under the provisions of an act of June 5, 1850. In order to avoid its payment, depositors adopted the practice of signing a receipt which was turned over to the person to receive payment. Not being made out to order (to avoid paying the tax) the receipt could be used by a finder or thief to receive payment of the amount indicated. The latter possibility naturally discouraged this method of transferring funds.

In order to encourage bank deposits and a resulting use of checks, the legislature in the act of 1865 declared that during a period of 10 years checks would be exempt from a stamp tax; but, at the same time, in order to avoid the substitution of checks for drafts and thus an evasion of the stamp tax on the latter instruments their use was subjected to a number of regulations which explain some of the existing French rules with respect to checks. The most important amendments to the law of 1865 are those of August 23, 1871, February 19, 1874, December 30, 1911, January 26 and August 2, 1917, and March 22, 1924.

It is somewhat surprising to find that there is no good modern French work devoted exclusively to bills and notes. The subject is, of course, dealt with in the different manuals on commercial law and in the general treatise by Professors Lyon-Caen and Renault. In addition, there are two very good works on checks, those of Bouteron, *Le chèque*,[55] and

[55] Bouteron, J. Le chèque, théorie et pratique. Paris, Dalloz, 1924. 918 p. Supplemented by Le droit nouveau du chèque; jurisprudence et législation 1924–27. Paris, Dalloz, 1928. 218 p.

Drouets' *La provision en matière de chèque.*[56] Payment of commercial paper by check, under an act of August 28, 1924, and the development of the check in France are dealt with in a recent work by L. Lamer.[57] In this connection, reference should also be made to a work in English, *The French Law relating to bills of exchange, promissory notes and checks*,[58] published by Williamson in 1912.

Maritime Commerce

Book 2 of the Commercial code is devoted in its entirety to the rules governing maritime commercial transactions. It does not, however, deal with maritime international law including such subjects as prize and blockade nor with what some French writers call administrative maritime law, including the relations between the state and the merchant marine and maritime police.

This second book is divided into 14 titles dealing with such important topics as: ships and liens (Title I), the seizure and sale of ships (Title II), owners and their liability (Title III), the captain, his rights and duties (Title IV), the engagement of the crew (Title V), charter parties (Title VI), bills of lading (Title VII), freight (Title VIII), bottomry (Title IX), marine insurance (Title X), average (Title XI), jettison (Title XII), and prescription (Title XIII).

Since the adoption of the Commercial code in 1807 the second book has undergone but few changes. There are, however, several legislative enactments of which some mention should be made. The more important include an act of July 10, 1885, relative to maritime mortgages, an act of March 24, 1891, modifying article 435 of the Code with respect to suits by shippers for damage and average, an act of July 15, 1915, modifying articles 407 and 436 with respect to collisions and limitation or prescription, a law of

[56] Drouets, G. La provision en matière de chèque (étude de la doctrine et de la jurisprudence françaises). Paris, Recueil Sirey, 1924. 354 p.

[57] Lamer, L. Le règlement par chèque des effets de commerce, loi du 28 août 1924, et le développement général du chèque en France. Paris, Sirey, 1928. 90 p.

[58] Williamson, A. The French law relating to bills of exchange, promissory notes, and cheques. London, Stevens & sons, 1912. 224 p.

April 29, 1916, concerning salvage, and recent extremely important legislation comprising a disciplinary and Penal code for the merchant marine (act of December 17, 1926), and a labor code for seamen, replacing the fifth title of the second book (act of December 13, 1926).

General Literature

Maritime law has been the subject matter of an extensive literature during the period of more than a century since the adoption of the Commercial code. Of the older works the most valuable is that portion of Pardessus's treatise on commercial law devoted to maritime matters, which, while perhaps seldom consulted at present, was long looked upon as a classic. Somewhat later works which can still be consulted with profit include de Valroger's 5-volume commentary, published in 1883–1886 under the title *Droit maritime. Commentaire théorique et pratique du livre* II *du Code de commerce*,[59] Desjardins's 9-volume *Traité de droit commercial maritime*,[60] published in 1878–1890, and de Courcy's *Questions de droit maritime*,[61] published in four series in 1877–1888. Reference is frequently made to Dufour's *Droit maritime*.[62]

Of the present current works the most important is undoubtedly the 3-volume treatise *Droit maritime* [63] published in a second edition in 1922–23, by the eminent Professor Ripert, of the Paris Faculty. Professor Ripert's treatise, a third edition of which is now in the course of publication, contains copious references to the maritime law of other jurisdictions as well as a scholarly discussion of French law. The treatment of maritime law in volumes 5 and 6 of Professors Lyon-Caen's and Renault's treatise on commercial law is also of importance. While of value, Danjon's *Traité*

[59] Valroger, L. de. Droit maritime. Commentaire théorique, et pratique du livre II du Code de commerce. Paris, Larose et Forcel, 1883–86. 5 v.

[60] Desjardins, A. Traité de droit commercial maritime. Paris, Pedone-Lauriel, 1878–90. 9 v.

[61] Courcy, A. de. Questions de droit maritime. Paris, A. Cotillon et cie, 1877–88. 4 v.

[62] Dufour, E. Droit maritime, commentaire des titres I et II, livre II, du Code de commerce. Paris, Durand, 1859. 2 v.

[63] Ripert, G. Droit maritime. 2. éd. Paris, Rousseau, 1922–23. 3 v. 3. éd. Paris, Rousseau. Vols. 1 and 2, published 1929.

de droit maritime[64] is less important. Mention might be made of the fact that the second edition of this latter work will contain six volumes, published with the collaboration of J. Lepargneur. Four have already appeared. Reference should be made at this point to a 3-volume work by F. Guérin.[65] The first volume deals with administrative maritime law, the second with laws and regulations, and the third with commercial and international maritime law.

The number of one-volume works on maritime law is small, and none are comparable with the larger treatises. Professor Wahl's *Précis théorique et pratique*,[66] while of value, is, perhaps, too detailed for a work of this kind. Professor Bonnecase, of the Bordeaux faculty, is also the author of a short work, *Traité de droit commercial maritime*,[67] which, though well written, is not of the same outstanding merit as his other works. A very good recent summary work, intended entirely for the use of students, is Professor Lacour's *Précis de droit maritime*.[68] Reference is sometimes made to Professor Vermond's *Manuel*.[69]

An important periodical devoted to maritime law was published from 1885 to 1923 under the title *Revue internationale du droit maritime*. After 1923 its place was taken by the *Revue de droit maritime comparé*, which contains a supplement devoted to French maritime decisions.

As in other fields of French law, the particular topics or subdivisions probably receive their best treatment in the general treatises. There are, however, a number of works devoted to some of the problems arising out of the application of the second book of the Commercial code, or subse-

[64] Danjon, D. Traité de droit maritime. 2. éd. Paris, Recueil Sirey, 1926–29. 6 v. 4 published.

[65] Guérin, F. Précis de législation maritime. Paris, Gauthier-Villars, 1927. 3 v.

[66] Wahl, A. Précis théorique et pratique de droit maritime. Paris, Recueil Sirey, 1924. 614 p.

[67] Bonnecase, J. Traité de droit commercial maritime. Paris, Recueil Sirey, 1923. 625 p.

[68] Lacour, L. Précis de droit maritime. Paris, Dalloz, 1927. 350 p.

[69] Vermond, E. Manuel de droit maritime. 5. éd. Paris, Recueil Sirey, 1920. 467 p.

quent legislation, which it is believed are of sufficient interest to warrant some mention.

Liens. Ship Mortgages

In general, French law admits of the possibility of mortgage or hypothecation of immovables and pledge of movables. Prior to 1874 it was legally impossible to mortgage a ship, as the law of mortgages applied only to realty. It was practically inexpedient to pledge a vessel, as in order to prevail over third parties, the pledgee is required under French law to have possession. As a result, the only legal or practical method of raising credit on a vessel was the bottomry bond, the disadvantages of which are as real under the rules of French maritime law as under those prevailing in the United States and England. In order to remedy the existing situation the French legislature in an act of December 10, 1874, made provision for the hypothecation or mortgage of ships, thus creating an exception to the general rule limiting mortgages to immovables (*cf.* Civil code, 2120). A number of modifications were made in the act of 1874 through a subsequent law of 1885 (July 10), and it is this latter which, as modified in part, now governs French ship mortgages.

Maritime liens seems to be better dealt with in the Commercial code than under the existing legislation and court decisions in the United States. Article 191 enumerates the different possible liens, or, to use the civil-law term, "privileges," and definitely fixes their relative rank.

A very good comparative study of maritime hypothecation is to be found in a thesis by Doctor Jourdan, *Des sûretés réelles sur les navires, étude de droit comparé.*[70] Doctor Jourdan's thesis also contains a chapter on liens and an interesting historical introduction. Liens for supplies and repairs are dealt with in a recent work by S. Carrus.[71]

Collisions

The French law with respect to responsibility for damage suffered in a collision is contained in article 407 of the Commercial code as amended in 1915. This amendment

[70] Jourdan, L. Des sûretés réelles sur les navires. Étude de droit comparé. Aix, 1914. 328 p.

[71] Carrus, S. Les privilèges sur le navire pour fournitures et reparations. Paris, Librairie générale de droit et de jurisprudence, 1928. 216 p.

was enacted in order to bring French law into complete harmony with the rules established by the Brussels convention of 1910, to which France adhered. In so far as injuries to the vessels are concerned, the Brussels convention adopted the French point of view with respect to liability arising out of common fault, namely, division of damages according to the degree of fault as contrasted with the American doctrine of equal division and the common-law doctrine of contributory negligence. Certain modifications of the former French law with respect to liability to third parties were, however, introduced by the act of 1915. Under the existing law each vessel is only liable for its proportionate share of damages caused to merchandise, but with respect to persons who have been injured or the heirs of those who have been killed in the collision the liability is joint and several (*in solido*) with recourse over in favor of the owners of the vessel who have been obliged to pay more than their share.

The principal French work on collisions is Autran's *Code international de l'abordage, de l'assistance et du sauvetage maritimes.*[72] A second edition was published in revised form in 1902 by Bevotte. It should be remarked, however, that this work, which also includes salvage, was published prior to the enactment of the legislation of 1915 to which reference has just been made. In a very good thesis, also published prior to the legislation of 1915, Dr. Demey [73] gives an exposition of the different French rules applicable to collision and includes a valuable comparison of the various contributory negligence doctrines. He also discusses the liability of the owners to third parties. The present law is dealt with in the manual on commercial law by Professors Lyon-Caen and Renault and the general treatise on maritime law by Professor Ripert.

Limitation of Liability

The important maritime doctrine of limitation of liability of owners is contained in article 216 of the Commer-

[72] Autran, F. Code international de l'abordage, de l'assistance et du sauvetage maritimes. 2. éd. rev. par R. de Bévotte. Paris, Chevalier-Marescq, 1902. 596 p.

[73] Demey, J. De la faute commune, spécialement en matière d'abordage maritime. Paris, 1906. 104 p.

cial code as modified by subsequent legislation. This article makes provision for the surrender of the vessel in its condition at the time with freight for the last voyage, thus providing for a doctrine which is similar to that contained in the American act of 1851. The laws and theories of the principal maritime nations were dealt with by Prodromidès in an excellent thesis, *Des restrictions légales à la responsabilité des propriétaires de navires.*[74] A very good discussion may also be found in the second volume of Professor Ripert's treatise.

Charter Parties. Maritime Transportation

There is no general French treatise on charter parties comparable with Carter's English work on the subject, but a useful short practical manual on the contract of maritime transportation was published in 1926 by Sauvage.[75] In addition, the ability of the carrier to exempt himself from liability through stipulation in the bill of lading has been the subject matter of several important theses. Doctor Sauvage is also the author of an excellent comparative study on negligence and non-responsibility clauses which was published in the form of a thesis in 1911 under the title *La clause de négligence et les clauses de nonresponsabilité des fautes.*[76] Other theses were published by Tallavignes d'Angles[77] and Gautier.[78] That of the latter appears to be particularly good. Non-responsibility clauses in bills of lading in general were dealt with in a recent publication by M. Armand.[78a]

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[74] Prodromidès, M. Des restrictions légales à la responsabilité des propriétaires de navires à raison des actes et des faits du capitaine et des gens de l'équipage. Paris, Jouve, 1919. 739 p.

[75] Sauvage, F. Manuel pratique du contrat de transport des marchandises par mer. Paris, Librairie générale de Droit et de jurisprudence, 1926. 412 p.

[76] Sauvage, F. La clause de négligence et les clauses de nonresponsabilité des fautes dans le contrat de transport par mer. Paris, Pichon et Durand-Auzias, 1911. 213 p.

[77] Tallavignes d'Angles, G. La responsabilité dans les connaissements français. Paris, 1908. 272 p.

[78] Gautier, A. Des clauses d'irresponsabilité en matière de transport maritime. Paris, Pichon et Durand-Auzias, 1910. 329 p.

[78a] Armand, M. Le problème des clauses de nonresponsabilité. Paris, Sirey, 1929. 250 p.

Insurance and average are often treated in the same works. Unfortunately the outstanding French treatises dealing with marine insurance are now too old to be of great practical value. The list of important works includes those by Lemonnier,[79] Emile Cauvet,[80] Weil,[81] and Droz,[82] all of which were published prior to the end of the last century. An important later Italian work, Vivante's[83] treatise on insurance, was translated into French and is sometimes consulted. In addition, the treatises on maritime law cover maritime insurance. A recent thesis, Bourbonnaud's *Les courtiers*,[84] dealing with insurance agents, is well worth consulting. Insurance. Average

General average has been the subject matter of a number of very good theses. Mention should be made of an important comparative study of the distinctive characteristics of contribution, published by Haralambidis in 1920 under the title *Des caractères distinctifs des avaries communes*.[85] This important thesis was published in a second edition in 1924.

Two other valuable theses on general average and contribution were published by Procos and Llinas under the titles *Les avaries et leur règlement dans les transports maritimes*[86] and *Essai sur le fondement juridique de la contri-*

[79] Lemmonier, C. Commentaire sur les principales polices d'assurances maritimes usitées en France. Paris, Videcoq, 1843. 2 v.

[80] Cauvet, E. Traité des assurances maritimes. Paris, Larose, 1879–81. 2 v.

[81] Weil, G. Des assurances maritimes et des avaries. Paris, Marchal et Billard, 1879. ix, 539 p.

[82] Droz, A. Traité des assurances maritimes, du délaissement et des avaries. Paris, Thorin, 1881. 2 v.

[83] Vivante, C. Traité théorique et pratique des assurances maritimes. Tr. par V. Yseux. Paris, Pedone, 1898. 564 p.

[84] Bourbonnaud, J. Les courtiers d'assurances maritimes. Paris, Rousseau, 1927. 127 p.

[85] Haralambidis, T. Des caractères distinctifs des avaries communes et du fondement de la contribution à ces avaries en droit français et comparé. Paris, Librairie générale de droit et de jurisprudence, 1924. xiv, 686 p., 1 l.

[86] Procos, J. S. Les avaries et leur règlement dans les transports maritimes (essai de réformes). Paris, F. Pichon et Durant-Auzias, 1921. 149 p.

bution pour avaries communes.[87] In addition, reference should be made to an important commentary, in the form of a thesis, on the old York-Antwerp and Antwerp rules, published in 1908 by Bousquet under the title *Commentaire pratique des règles d'York et d'Anvers et de la règle d'Anvers, 1903.*[88] A very good thesis dealing with average and maritime insurance from the point of view of conflict of laws was published by Darmon in 1908 under the title *Des conflits des lois en matière d'avaries et assurances maritimes.*[89]

Law of the Flag

In this connection reference should be made to an important work on the law of the flag as the criterion for regulation of maritime conflict of laws problems, recently published by Dr. Jacques Eynard under the title *La loi du pavillon.*[90]

Land Insurance

While maritime insurance is dealt with specifically in the Commercial code, land insurance is not touched upon in either the Commercial or Civil codes. As a result the general provisions of the Civil code relative to contracts in general, are controlling.

The best general work on the subject is that of Professor Hémard, of Paris, *Théorie et pratique des assurances terrestres.*[91] A very good shorter work was published in a second edition in 1927 by Sumien under the title *Traité théorique et pratique des assurances.*[92] Life insurance was dealt with in an important one-volume work by

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[87] Llinas, A. Essai sur le fondement juridique de la contribution pour avaries communes. Étude historique et critique. Montpellier, 1922. 227 p.

[88] Bousquet, A. Commentaire pratique des règles d'York et d'Anvers et de la règle d'Anvers, 1903. Paris, Larose et Tenin, 1908. 497 p.

[89] Darmon, R. Des conflits des lois en matière d'avaries et d'assurances maritimes. Paris, 1908. 126 p.

[90] Eynard, J. La loi du pavillon. Recherche d'une règle générale de solution des conflits de lois en droit maritime international. Paris, Recueil Sirey, 1926. 269 p.

[91] Hémard, J. Théorie et pratique des assurances terrestres. Paris, Recueil Sirey, 1924–25. 2 v.

[92] Sumien, P. Traité théorique et pratique des assurances terrestres et de la réassurance. 2. éd. Paris, Dalloz, 1927. 363 p.

Dupuich, *Assurance-vie. Théorie et pratique*[93] and in two larger but, perhaps, less valuable works by Lefort, *Traité théorique et pratique du contrat d'assurance sur la vie*[94] and *Nouveau traité de l'assurance sur la vie.*[95] The latest important work devoted exclusively to fire insurance is that of Droz.[96]

Reference is also sometimes made to a number of older works, which, while at one time valuable, have been replaced by those just mentioned, particularly by that of Professor Hémard. The *Traité général des assurances*,[97] published by Alauzet in 1844 should be numbered among the more important. Another important earlier text, *Manuel général des assurances*,[98] by Agnel and de Corny was published in a sixth edition in 1923. An extensive bibliography appears in Professor Hémard's treatise (v. 1, p. 641).

Bankruptcy

As already stated, one of the principal causes for the adoption of the Commercial code was the large number of scandalous failures which immediately brought to the fore the necessity for revision of the then existing commercial laws. The third book of the Code was devoted in its entirety to insolvency and bankruptcy and through reaction against the leniency of the earlier laws went to an opposite extreme in laying down rules which were marked by an excessive severity. As early as 1827 steps were taken for the revision of the third book and in 1838 the existing legislation was completely revised. The new act was incorporated into the Code and, as modified in part, constitutes the present legislation.

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[93] Dupuich, P. Assurance-vie. Théorie et pratique. Jurisprudence. 2. éd. Paris, Dalloz, 1922. liii p., 1 l., 801 [2] p.

[94] Lefort, J. Traité théorique et pratique du contrat d'assurance sur la vie. Paris, Thorin & fils, 1894–1900. 4 v.

[95] Lefort, J. Nouveau traité de l'assurance sur la vie; doctrine, jurisprudence, droit comparé. Paris, Rivière, 1920. 2 v.

[96] Droz, A. Commentaire des polices d'assurance contre le risque d'incendie. Paris, Larose et Tenin, 1913. 197 p.

[97] Alauzet, Fr. Traité général des assurances. Paris, Cosse et Marchal, 1843. 2 v.

[98] Agnel, E. Manuel général des assurances, ou Guide pratique des assureurs et assurés. 6. éd. refondue par C. de Corny et G. Dujon. Paris, Marchal et Godde, 1923. 854 p.

In present French legal language there are three distinct terms which are applicable to the situation of debtors within the purview of the Code as modified by subsequent legislation. The term "*faillite*" (insolvency) is applied generally to traders who have failed to meet their engagements. The term "*banqueroute*" (bankruptcy) is reserved for traders who have been guilty of some act constituting a serious misdemeanor or felony. The expression "*liquidation judiciaire*" (judicial liquidation) was introduced into French law as the result of an act of March 4, 1889, and designates the position of a debtor who, although having failed to meet his engagements, is worthy of special consideration because of steps taken to reveal his insolvency. It should be remarked that the latter legislation was not incorporated into the Commercial code and only modifies directly several articles of the Code (arts. 438, 549, 586). Under the legislation of 1889 the debtor who has taken the proper steps for a declaration of his embarrassed state is permitted to remain in possession of his property with the assistance of a liquidator, instead of being completely dispossessed by a trustee or receiver.

It should be remarked that the provisions of the Commercial code and the legislation of 1889 apply only to traders. The term "*déconfiture*" is applied to the situation of non-traders who are insolvent and unable to meet their obligations.

The outstanding treatise on insolvency, bankruptcy, and judicial liquidation is that of Professor Percerou,[99] of the Paris Faculty. It forms a part of the *Collection Thaller*. In addition, the general subject is dealt with by Professors Lyon-Caen and Renault in both their treatise and manual, as well as in other works on commercial law. Reference is also often made to a much earlier work by Renouard, *Traité des faillites et banqueroutes*,[1] the chief value of which to-day

[99] Percerou, P. Des faillites, banqueroutes et liquidations judiciaires. Paris, Rousseau, 1907–14. 2 v.

[1] Renouard, A. Traité des faillites et banqueroutes. 3. éd. Paris, Guillaumin, 1857. 2 v.

lies in the fact that the distinguished author took a prominent part in the earlier revision of the third book of the Code.

Reference should also be made to two comparatively early works on judicial liquidation. The act of 1889 was the subject of an important commentary by Lecomte published under the title *Traité théorique et pratique de la liquidation judiciaire*,[2] and a somewhat less valuable study by Malapert, *Du régime de la liquidation judiciaire*,[3] consisting of an examination of the advantages and disadvantages of the régime introduced by the act of 1889.

A good summary (in English) of French bankruptcy laws[4] was published by Pierre Pellerin in 1907.

Commercial courts will be dealt with in the chapter on procedure.

LITERARY AND INDUSTRIAL PROPERTY

The rules of law designed to protect creations of the human mind, which are often designated under the general title industrial and literary property, are dealt with rather summarily in some of the works on civil law. They sometimes receive treatment in works on commercial law. But the best treatment is to be found in specialized works dealing with such particular topics as copyright, patents, and trade-marks.

A list of French legislative enactments with respect to unfair competition, trade-marks, copyright, patents and models, and designs, with a short bibliography through 1927, may be found in the fifth volume of the *Bulletin de la Société italienne pour les études de droit industriel*, pub-

[2] Lecomte, M. Traité théorique et pratique de la liquidation judiciaire. Commentaire des lois du 4 mars 1889 et du 4 avril 1890. Paris, Chevalier-Marescq, 1890. 2 p. l., iii, 865 p., 1 l.

[3] Malapert, E. Du régime de la liquidation judiciaire, de ses inconvénients et de ses avantages. Paris, Larose & Forcel, 1892. 486 p.

[4] Pellerin, P. The French law of bankruptcy and winding up of limited companies. The conflict of laws arising therefrom. London, Stevens & sons, 1907. 117 p.

lished at Rome. It should be remarked that this useful bulletin also contains a synopsis of the enactments, with bibliographies, of the principal commercial nations.

General Literature

The leading French periodical devoted to literary and industrial property is the *Annales de la propriété industrielle, artistique et littéraire*, founded in 1855. It has included in its list of directors the names of Pouillet and Claro, and is now under the direction of Maillard and Taillefer, both specialists in the field of patent and copyright law. The entire field of industrial, literary, and artistic property is dealt with in the third edition of Professor Bry's *Cours élémentaire*,[5] published in 1914. It should be recalled that Professor Roubier, of Lyons, is said to be preparing a treatise on industrial and literary property for the *Collection Thaller* (*see* Commercial law, *supra*).

Copyright

The legislation protecting the rights of authors of literary and artistic works has gone through a complicated history of successive enactments, with the result that there is at present no single law governing the matter. The laws now in force had their origin in certain decrees and legislative acts of 1791 and 1793 dealing with presentations of dramatic and musical productions and reproductions of literary and artistic works. Subsequent laws such as those enacted in 1844, 1845, and 1866 had as their object the prolongation of the duration of the monopoly of reproduction accorded authors in earlier legislation. In addition, an act of March 11, 1902, extended the privileges provided under the act of 1793 to architects and sculptors. Recent legislation (act of May 19, 1925) made provision for special new rules with respect to the deposit with proper government depositories of copies of various types of artistic and literary productions. Attention should also be called here to important legislation enacted in 1920 establishing in favor of their authors a tax on public sales of artistic works.

French copyright law is briefly analyzed in Copinger's *Law of copyright*,[6] a sixth edition of which was published in

[5] Bry, G. Cours élémentaire de législation industrielle. II: La propriété industrielle littéraire et artistique. 3. éd. Paris, Larose et Tenin, 1914. 822 p.

[6] Copinger, W. A. Law of copyright. 6th ed. London, Sweet & Maxwell, 1927. 607 p.

1927. The earlier editions, however, devote more space to the laws of countries other than England, and a more extensive discussion of the French legislation in existence in 1915 may be found in the fifth edition (pp. 352–368). A summary of French legislation and a bibliography may also be found in Singer's *Copyright laws of the world*,[7] published in 1909 (p. 42).

There is no outstanding recent French work dealing with the rights of authors. The best general treatise is that of Pouillet, a specialist in the entire field of literary and industrial property. It was revised and published in a third edition in 1908 under the title *Traité théorique et pratique*.[8] Another good but older work is that of Huard, *Traité de la propriété intellectuelle*,[9] the first volume of which is devoted to literary and artistic productions. There is also a recent theoretical work on the rights of authors by Renée-Pierre Lepaulle[10] and another by Marcel Plaisant[11] on artistic and literary creations. In addition, the protection of dramatic works was dealt with by Grente[12] in 1925. The act of 1925 concerning deposits was commented on by Morel[13] in 1926.

Reference is sometimes made to a much older work, Renouard's *Traité des droits d'auteurs*,[14] the chief value of which is, at present, historical. Bibliographic notes (*cf.* Aubry and Rau, v. 2, p. 259) frequently list a number of

[7] Singer, B. Copyright laws of the world. Chicago, B. Singer, 1909. 196 p.

[8] Pouillet, E. Traité theorique et pratique de la propriété littéraire et artistique et du droit de représentation. 3. éd. refondue par G. Maillard et C. Claro. Paris, Marchal et Billard, 1908. 1,000 p.

[9] Huard, G. Traité de la propriété intellectuelle. Paris, Marchal et Billard, 1903–06. 2 v.

[10] Lepaulle, R. Les droits de l'auteur sur son oeuvre. Paris, Dalloz, 1927. 430 p.

[11] Plaisant, M. La création artistique et littéraire et le droit. Paris, Rousseau, 1920. 135 p.

[12] Grente, M. La protection légale des oeuvres dramatiques. Paris, Dalloz, 1925. 119 p.

[13] Morel, E. La loi sur le dépot légal (19 mai 1925). Paris, Champion, 1925. 32 p.

[14] Renouard, A. Traité des droits d'auteurs dans la littérature, les sciences et les beaux arts. Paris, J. Renouard et c^{ie}, 1838–39. 2 v.

other older works, none of which, however, are of practical value to-day.

Patents

The legal protection of inventions through patents (*brevets d'invention*) had its origin in two laws enacted by the Constituent Assembly in 1791. The law now in force is that of July 5, 1844, as amended by subsequent legislation, particularly by an act of April 7, 1902. Articles 3 and 4 of an act of June 26, 1920, establish a special tax on requests for patents.

In addition to the French texts, there are a number of available sources of French patent laws. They are systematically presented in the important series edited by Professor Kohler and Maximilian Mintz, *The patent laws of all nations*[15] (v. 2, pp. 467–494). A useful summary is contained in a recent work by Singer, *Patent laws of the world*[16] (pp. 103–116). Wallace Fairweather gives in concise form a summary of French law (pp. 165–178) in his comparatively recent work on *Foreign and colonial patent laws.*[17] In addition, a very short summary is contained in Wallace White's *Patents throughout the world*[18] (pp. 45–47).

The best French work dealing with patent law is that of Pouillet, whose work on the law of copyright has already been referred to. The text was revised in 1915 by Taillefer and republished in a sixth edition under the title, *Traité des brevets d'invention et secrets de fabrique.*[19] Another valuable work is that of Allart, *Traité théorique et pratique,*[20] which was published in a third edition in 1911. In addition, attention should again be called to Huard's trea-

[15] Kohler u. Mintz. Die patentgezetze aller völker (The patent laws of all nations). Berlin, Decker, 1907–12. 2 v.

[16] Singer, B. Patent laws of the world. 4th ed. Hammond, Ind., W. B. Conkey & co., 1924. 305 p.

[17] Fairweather. Foreign and colonial patent laws. London, Constable & company, 1910. 279 p.

[18] White, W. W. Patents throughout the world. New York, Trade mark law publishing co., 1923. 244 p.

[19] Pouillet, E. Traité théorique et pratique des brevets d'invention et de secrets de fabrique. 6. éd. refondue par A. Taillefer. Paris, Marchal et Godde, 1915. 328 p.

[20] Allart, H. Traité théorique et pratique des brevets d'inventions. 3. éd. Paris, Rousseau, 1911. 694 p.

tise on intellectual property, the second volume of which is devoted to patent law. A very good short practical guide, dealing in particular with the procedure to be followed in procuring a patent, was published in 1926 by Moreaux and Weismann.[21] A practical manual was also published by Fernand-Jacq, a specialist, in 1914.[22] Mention should be made of two works on scientific discoveries, one by Suzanne Munier[23] and the other a thesis by Vigneron,[24] both published in 1925.

Trade-marks

Trade-marks (*marques de fabrique et de commerce*) are regulated by an act of June 23, 1857, as amended in 1873, 1890, and 1920. The best work on the subject is that of Pouillet, *Traité des marques de fabrique et de la concurrence déloyale.*[25] Another important treatise, *Traité théorique et pratique*[26] was published by Allart in 1914.

Designs and Models

Until comparatively recently, the law protecting designs and models was in a rudimentary state due to the insufficiency of earlier legislation. The entire matter is now regulated by an act of 1909. This act was dealt with in an able thesis by Marquis, *La législation protectrice des dessins et modèles.*[27] Another valuable work is that of Pouillet, which was revised in 1911 under the direction of Taillefer and Claro and published under the title *Traité des dessins et modèles.*[28]

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[21] Moreaux, R., et Weismann, C. Les brevets d'invention. Paris, Dalloz, 1926. 532 p.

[22] Jacq, F. Manuel pratique de la propriété industrielle et commerciale. Paris, Roger, 1914. 340 p.

[23] Munier, S. Les droits des auteurs de découvertes ou d'inventions scientifiques. Essai de philosophie et de technique juridique, suivi d'une proposition de loi. Paris, Dalloz, 1925. 289 p.

[24] Vigneron, M. Essai sur la protection de la propriété scientifique. Paris, Recueil Sirey, 1925. 90 p.

[25] Pouillet, E. Traité des marques de fabrique et de la concurrence déloyale en tous genres. 6. éd. rev. par Taillefer et Claro. Paris, Marchal et Godde, 1912. 1,358 p.

[26] Allart, H. Traité théorique et pratique des marques de fabrique et de commerce. Paris, Rousseau, 1914. 613 p.

[27] Marquis, M. La législation protectrice des dessins et modèles. (Loi du 14 Juillet 1909.) Paris, 1909. 196 p.

[28] Pouillet, E. Traité théorique et pratique des dessins et modèles. 5. éd. refondue par A. Taillefer et C. Claro. Paris, Marchal et Godde, 1911. 875 p.

Unfair Competition

In addition to the special statutory regulations protecting certain categories of industrial and literary property, French law has made provision for the protection of traders through judicial development of the doctrine of unfair competition (*concurrence déloyale*). Starting with the general provision of article 1382 of the Civil code, providing for compensation for a wrong done, French courts have developed a theory of delictual responsibility, which in the main resembles that developed in the United States within the past few years. Instead of enumerating the acts constituting unfair competition in special legislation, French law has, through the statement of a broad principle, left the determination of the acts which give rise to a cause of action to the discretion of the courts. There is much to be said in favor of both systems. Enumeration makes for certainty. On the other hand, there is a possibility of courts holding that acts not included within the listed categories are impliedly privileged with the result that by hewing close to the line, business rivalry may lead to tactics which, while not reprehensible in the eyes of the law, go beyond the pale of fair dealing. The French system has the disadvantage of leaving the determination of unlawful acts to the arbitrary finding of the judge. At the same time the danger is not as great as it might seem, since judicial decisions, while not necessarily binding precedents, have weight and tend to give rise to a principle or doctrine for the guidance of courts, thus taking the matter out of the arbitrary discretion of a single tribunal.

The latest work on the subject is Pichot's *De la concurrence déloyale et de la contrefaçon*,[29] which first appeared as a thesis in 1923 and was republished in 1924. It is also dealt with in Pouillet's *Traité des marques de fabriques et de la concurrence déloyale*, already referred to in connection with trade-marks. Discussions may be found in treatises on civil law.

Foreign Patents and Copyright

The various enactments dealing with industrial, literary, and artistic property make provision for the protection of foreigners who have taken out patents and copyrights in

[29] Pichot, O. De la concurrence déloyale et de la contrefaçon en matière commerciale et industrielle. Paris, Rousseau, 1924. 568 p.

France. Article 27 of the act of 1844 provides for the protection of patents obtained by foreigners in France, foreigners being permitted also (art. 29) to patent inventions already patented in other countries. A decree of March 28–31, 1852, expressly extends the benefits of copyright laws to foreigners. Foreign authors of designs and models seem only to be protected under the provisions of the act of 1909 (art. 13) if they have a domicile or industrial or commercial establishment in France. The act of 1857 protects only the trade-marks of individuals having an industrial or commercial establishment in France. France is also a party to a number of treaties and conventions concerning the protection of industrial and literary property, including the Copyright Union.

A good discussion of international protection of copyright, patents, and trade-marks may be found in Professor Pillet's treatise on private international law.[30] Professor Pillet is also the joint author of an earlier text on the international protection of industrial property, *Régime international de la proprieté industrielle*,[31] published in 1911. The new international régime with respect to industrial property (Hague conference of 1925) was recently dealt with by Marcel Plaisant and Fernand-Jacq in their *Le nouveau régime international*.[32]

CIVIL PROCEDURE

Strictly speaking, civil procedure includes only the formal rules of law to be observed in proceedings before courts. In this narrow sense it comprises pleading, production of proof, pronouncement of judgment, and execution. In a wide sense it is sometimes made to include the organization of courts.

[30] Pillet, A. Traité pratique de droit international privé. Paris, J. Allier, 1923–1924. 2 v.

[31] Pillet, A., et Chabaud, G. Le régime international de la propriété industrielle, droit français et conventions internationales. Grenoble, Allier frères; Paris, Larose et Tenin, 1911. 511 p.

[32] Plaisant, M. et Jacq, F. Le nouveau régime international de la propriété industrielle. (La Conférence de La Haye, 1925.) Paris, Recueil Sirey, 1927. 208 p.

The distinction is not without importance in French law since judicial organization and procedure in a strict sense are governed by separate laws.

Judicial Organization

Judicial organization has received the attention of the legislature in France at different periods with the result that the present system is based on a succession of laws which are too complicated to be discussed in detail in a work of this kind. All that can be done is to point out some of the more important enactments.

The reorganization of the judicial hierarchy occupied the immediate attention of the revolutionary government. The principal enactment is that of August 16–24, 1790, through which the Constituent Assembly broke entirely with the past by abolishing the existing courts and establishing a new régime which forms the fundamental basis of that now in existence. Under the convention the admirable organization of the Constituent Assembly was destroyed by the partial abolition of courts through the substitution of arbitration in a number of cases, but the directorate reestablished in part the prior system with important modifications. It was under the Consulate that the judicial organization of France, which remained in effect until 1926, took place; since then the important legislation includes an act of 1810, relating to judicial organization and administration of justice, a law of 1883, dealing with certain reforms, a law of April 28, 1919, and a decree of September 6, 1926. The act of 1919 had as its principal purpose a reduction in the number of magistrates with a view to an increase in the remuneration of those still forming a part of the general hierarchy. The decree of September 6, 1926, carried into effect the financial legislation of August 3 of the same year and in reducing materially the number of courts brought about the greatest single change in general organization which has been made since the first Empire.

The present hierarchy includes tribunals of the first instance (*tribunaux de première instance*), justices of the peace (*juges de paix*), commercial courts (*tribunaux de commerce*), courts for the arbitration of labor disputes (*Conseils de prud'hommes*), courts of appeal (*cours d'appel*), and the Court of Cassation (*Cour de Cassation*). In addition, there

are special administrative courts which will be discussed in the chapter on public law.

Inferior Courts

The "tribunal of the first instance" is the court having general original civil jurisdiction. Justices of the peace were created by the revolutionary régime and now have limited jurisdiction as fixed by law. Commercial courts are the only tribunals existing at present which antedate the revolutionary régime. Maintained by the law of August 24, 1790, and regulated by the Commercial code (art. 614 *et seq.*) and an act of 1883, they have jurisdiction of matters relating to transactions of merchants. They only sit in such centers as are designated by the Council of state, and, where there is no commercial court, commercial matters are heard by a tribunal of first instance. As brought out by Paul Fuller, of the New York bar (12 Columbia Law Review, 145), their retention had as its basis two underlying principles: Merchants as specialists are best fitted to judge their own affairs. The interests of business require that commercial disputes be withdrawn from the delays of ordinary litigation. A short but very good account of French commercial courts may be found in an article by B. H. Conner, of the New York bar (17 Green Bag 304.) A good discussion also appears in Goirand's *English treatise on French commercial law*, already mentioned in the chapter on commercial law. They are also dealt with in French works on commercial law as well as in those devoted to procedure. Courts for the arbitration of labor disputes (*Conseils de prud'hommes*) have jurisdiction of difficulties between individual employers and workmen arising out of the contract of employment in the different branches of industry and commerce. The modern institution dates from Napoleon's visit to Lyon in 1806. Since then they have become general and at present are governed by a law of March 27, 1907, as modified principally by a law of July 3, 1919, and a law of March 30, 1920, now incorporated in the labor and social code.

Court of Cassation

The Court of Cassation is the court of last resort, and to use a Gallicism, it has as its mission the supervision of the exact interpretation of the law by other courts. Due to its position as the highest court in the French judicial hierarchy

it is sometimes referred to as the Supreme court. The court is divided into three chambers—*Chambre des requêtes*, *Chambre civile*, and *Chambre criminelle*. The *Chambre des requêtes* examines all civil cases brought before the court and determines whether they are based upon sufficient merit to go before the *Chambre civile*. If it concludes that they are not, the request for review is rejected. The outstanding merit of the system is the lightening of the burdens of the *Chambre civile*, which only examines such cases as are based upon some meritorious claim. The *Chambre criminelle* passes on cases which are brought before it from the lower courts under the provisions of the Code of criminal procedure (arts. 416 *et seq.*).

The organization and history of the Court of Cassation, as well as the procedure in resorting to it, were dealt with by Crépon [33] in a 3-volume work which was originally published as a part of the *Répertoire du droit français*. It was separately published in 1892. Another important but shorter work dealing with the powers and jurisdiction of the court, as well as the procedure in civil matters, is Faye's *La Cour de Cassation*.[34] The special functions of the *Chambre des requêtes* also received valuable separate treatment in an interesting thesis, *La Chambre des requêtes de la Cour de Cassation*,[35] which was published by Houyvet in 1906.

In addition, mention should be made of a very good thesis, Morillot's *La Cour de Cassation, Conseil supérieur de la magistrature*,[36] dealing with the important disciplinary jurisdiction over the general magistracy, conferred on the Court of Cassation as the result of an act of 1881.

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[33] Crépon, T.—Cour de Cassation. Origines, organisation, attributions. Du pourvoi en cassation en matière civile. Paris, Larose et Forcel, 1892. 3 v. (Extr. Répertoire générale alphabêtique du droit français.)

[34] Faye, E. La Cour de Cassation; traité de ses attributions et de sa compétence et de la procédure observée en matière civile. Paris, Chevalier-Marescq, 1903. 728 p.

[35] Houyvet, H. La Chambre des requêtes de la Cour de Cassation. Paris, 1906. 187 p.

[36] Morillot, A. La Cour de Cassation, conseil supérieur de la magistrature. Paris, 1910. 152 p.

Literature on Judicial Organization

Unfortunately there is no good special modern French work dealing with judicial organization in general, but most of the treatises devoted to procedure, which will be referred to presently, discuss the subject in detail. It might be advisable, however, to mention at this point a number of works dealing with reform of the French judicial organization. The changes made under the Constituent Assembly received excellent treatment in a thesis by Giraud which was published in 1921 under the title *L'Oeuvre d'organisation judiciaire de l'Assemblée nationale constituante.*[37] Judicial reform, particularly with reference to the question of the establishment of a single judge, instead of the present system of several judges sitting together, was dealt with by Leroy in a thesis, *Le juge unique.*[38] Dr. Leroy's thesis deals not only with the system in vogue since the Revolution but also with the historical and comparative phases of the much mooted question of the advisability of adopting the Anglo-American system of a single judge. Another outstanding and more recent thesis dealing with the same question is Pigé's *Le juge unique et le statut de la magistrature en France.*[39] Dr. Pigé's thesis also gives some idea of the present system of recruiting judges who, in France, are members of a special profession and are not recruited from the bar after long practice as is the case in England and the United States. In connection with reform of the magistracy, reference should also be made to a short work by Malepeyre, *La magistrature en France et projet de réforme,*[40] which though published in 1899 may still be read with interest.

Reform

There are a number of English sources dealing with French judicial organization. A good summary was published by Henri Goirand in 1919 under the title *The French*

[37] Giraud, E. L'oeuvre d'organisation judiciaire de l'Assemblée nationale constituante. Les juges. Paris, 1921. 116 p.

[38] Leroy, G. Le juge unique et la réforme de notre organisation judiciaire. Paris, 1907. 230 p.

[39] Pigé, B. Le juge unique et le statut de la magistrature en France. Paris, Sagot, 1925. 308 p.

[40] Malepeyre, F. La magistrature en France et projet de réforme. Paris, Fasquelle, 1900. 276 p.

judicial system.[41] A reprint of a paper on the French judiciary and bar, read in Inner Temple Hall in 1911 by Emanuel Underdown, is also worth consulting.[42] An informative article by Charles Gans appeared in the Juridical Review for 1903 (v. 15, p. 362). Another valuable discussion, by Professor Walton, of Magill University, was published in the Law Quarterly Review for 1903 (v. 19, pp. 263 and 402). The second part deals with the relation of the Ministry of Justice to the administration of civil and criminal justice as well as with the French bar. Professor Garner, of the University of Illinois, is the author of an article in the Yale Law Journal (v. 26, p. 347, 1917) dealing with such subjects as plurality of judges, the excessive number of judges in France, their appointment and promotion.

Procedure

Rules of procedure are largely contained in the Code of civil procedure (*Code de procédure civile*).

History

While the evolution of the present court system in France began with the legislation of the revolutionary régime, civil procedure has a much older history. The immediate source of the rules contained in the present Code was in large part the legislation of 1667, already mentioned in the chapter on legal history, but, as brought out in the historical introduction of the recent treatise on civil procedure by Professors Glasson and Tissier (*infra*), the ultimate sources are the procedural rules of the canon and feudal courts of the Middle Ages, which in turn are of Roman and Frankish origin.

Adoption of the Code of Civil Procedure

Professors Glasson and Tissier also give some account of the adoption of the Code. The procedure followed was much the same as that in adopting the Civil code. The commission charged with its preparation consisted of five members all of whom were closely connected with the courts or practice. Treilhard was a former lawyer and president of the Paris Court of Appeals. Pigeau, also a practicing lawyer, wrote extensively on procedure, and, it is interesting

[41] Goirand, H. The French judicial system and procedure in French courts. London, Stevens and sons, 1919. 51 p.

[42] Underdown, E. M. The French judiciary and bar. [London] Printed by order of the masters of the bench of the honorable Society of the Inner Temple, 1911. 39 p.

to note, later became professor of procedure at the Paris faculty. Sequier was a former magistrate, Berthereau president of the Seine tribunal, and Try a lawyer. After its preparation the project of the commission was discussed by the Council of State and then placed before the tribunat and Legislative Assembly. Although definitely voted in 1806, the Code did not become effective until January 1, 1807. Since its adoption it has undergone surprisingly few changes.

The Code itself consists of two parts. Part 1 is entitled *Procédure devant les tribunaux*, and is divided into five books comprising 811 articles. The different books are entitled, *De la justice de paix*, *Des tribunaux inferieurs*, *Des tribunaux d'appel*, *Des voies extraordinaires pour attaquer les jugements*, *De l'exécution des jugements*. The second part, comprising articles 812 to 1042, is entitled *Procédures diverses*. It is divided into three books and the subject matter dealt with includes ex parte proceedings, opening of successions, and arbitration.

Annotated Editions

Of the different annotated editions of the Code, that published by Dalloz,[43] besides being an excellent piece of work, has the advantage of recent publication. Of the other two important annotated codes, that of Tissier, Darras, and Louiche-Desfontaines,[44] which is published by the *Recueil Sirey*, is usually considered to be better than that cited under the name Sirey and [45] published by Marchal and Billard. The best pocket edition is that published by Dalloz.[46] That published by Sirey and cited under the name Carpentier [47] is also important.

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[43] Dalloz. Nouveau Code de procédure civile annoté et expliqué d'aprés la jurisprudence et la doctrine, par G. Griolet, C. Vergé et St. de Lanzac de Laborie. Paris, Dalloz, 1910–22. 4 v.

[44] Tissier, A., Darras, A., et Louiche-Desfontaines. Code de procédure civile annoté. Paris, Recueil Sirey, 1901–04. 2 v. Supplements. 1908. 396 p.

[45] Sirey, J. Les codes annotés de Sirey. Code de procédure civile. 4. éd. Paris, Marchal et Billard, 1905–06. 2 v.

[46] Dalloz. Code de procédure civile. Paris, Dalloz, 1928. 523 p.

[47] Carpentier, A. Code de procédure civile. Paris, Recueil Sirey. 1926. 673 p.

General Literature

During the now more than a century since its adoption the Code of civil procedure has been the subject matter of an extensive literature which is too vast in proportion to its importance to receive detailed discussion. There are, however, a number of works which, though largely replaced by those of more recent date, deserve to be mentioned. Professor Pigeau, who, as has already been stated, was one of the members of the preparatory commission, wrote extensively on procedure both before and after the adoption of the code. His works, such as the *Commentaire sur le Code de procédure civile*,[48] and *La procédure civile des tribunaux de France*[49] are still of value, not only for historical purposes but also as sources of interpretation. The *Cours de procédure civile*[50] of Rauter, though published in 1834, long enjoyed a reputation comparable with that of Aubry and Rau in civil law. Rodière, an extensive writer on procedural matters, left a very good work in his *Lois de la compétence et de la procédure en matière civile.*[51] Reference is also sometimes made to *Éléments d'organisation judiciaire, de procédure civile et de droit pénal*[52] by Ortolan and Bonnier, which, though now of little practical importance, was very well done. In connection with the older works mention should also be made of an early critical philosophical study by Bordeaux which was published in 1857 under the title *Philosophie de la procédure civile.*[53] Other works to which reference is sometimes made, but which are no longer of practical value, include the commentaries and

[48] Pigeau. Commentaire sur le Code de procédure civile, revu par Poncelet et Lucas-Championnière. Paris, 1827. 2 v.

[49] Pigeau. La procédure civile des tribunaux de France. 5. éd. par J. L. Crivelli. Paris, Roret, 1828. 2 v.

[50] Rauter. Cours de procédure civile. Paris, Berger-Levrault, 1834. 465 p.

[51] Rodière, A. Exposition raisonnée des lois de la compétence et de la procédure en matière civile. 2. éd. Toulouse, Delboy, 1855–57. 3 v.

[52] Ortolan, E., et Bonnier. Éléments d'organisation judiciaire, de procédure civile et de droit pénal. Paris, Plon, 1858. 3 v.

[53] Bordeaux, R. Philosophie de la procédure civile. Paris, Durand, 1857. 615 p.

treatises of Thomines-Desmazures,[54] Berriat Saint-Prix,[55] Carré and Chauveau,[56] and Boncenne.[57]

Turning now to modern texts we find a somewhat more limited field to choose from. The *Traité théorique et pratique*[58] by Professors Glasson and Tissier, when completed, will probably be the best general work. At present three volumes have appeared. The publication of the third and fourth having been interrupted by the unfortunate death of Professor Tissier, their preparation was continued by Professor Morel, of the Paris faculty, whose reputation in procedural matters is the equal of that of his predecessors, Glasson and Tissier, who were long identified with the teaching of procedure in France. Professor Glasson was responsible for the revision of Professor Boitard's *Leçons de procédure civile*,[59] which were originally published by de Linage and later continued by Professor Colmet-Daage. The popularity of this latter work is attested by the fact that it was published in a fifteenth edition in 1890. Professor Tissier revised a 2-volume *Précis théorique et pratique de procédure civile*[60] originally written by Professors Glasson and Colmet-Daage. This latter work was in turn a revision of the earlier lessons by Boitard and was published in a second edition in 1908. The treatise now

[54] Thomines-Desmazures. Commentaire sur le Code de procédure civile. Paris, 1832. 2 v.

[55] Berriat Saint-Prix, J. Cours de procédure civile. 7. éd. Paris, Plon; Chevalier-Marescq, 1858. 2 v.

[56] Carré et Chauveau. Lois de la procédure civile et commerciale. 5. éd. Paris, Marchal et Billard, 1880–1886. 11 v. in 13 including a Supplement by G. Dutruc.

[57] Boncenne, P. Introduction à l'étude de la procédure civile. 2. éd. Paris, Cosse et Marchal, 1859. 635 p. Boncenne et Bourbeau. Théorie de la procédure civile. 2. éd. Bruxelles, Bruylant, 1838–63. 7 v.

[58] Glasson, E., Tissier, A., et Morel, R. Traité théorique et pratique d'organisation judiciaire, de compétence et de procédure civile. 3. éd. Paris, Recueil Sirey, 1925–29. 4 v. 3 v. published.

[59] Boitard, J. Leçons de procédure civile, pub. par G. de Linage, continuées par G. Colmet-Daage. 15. éd. refondue par E. Glasson. Paris, Pichon, 1890. 2 v.

[60] Glasson, E., et Colmet-Daage, P. Précis théorique et pratique de procédure civile. 2. éd., rev. par A. Tissier. Paris, Pichon et Durand-Auzias, 1908. 2 v.

being published, while having a close connection with the earlier treatises, is a complete revision and will include organization of courts, jurisdiction, and procedure properly speaking.

Another almost as important and somewhat larger treatise is that of Professors Garsonnet, at one time dean of the Paris Law School, and Cézar-Bru, of the University of Aix, *Traité théorique et pratique de procédure civile.*[61] A third edition, which consists of nine volumes, was published between 1912 and 1925. At present it is the only completed extensive modern work of outstanding value.

The best short work on procedure is probably the *Précis de procédure civile*[62] by Professors Garsonnet and Cézar-Bru. A very good short elementary text designed primarily for the use of students is Professor Cuche's *Précis de procédure civile et commerciale.*[63] Another, more scholarly, one-volume treatise was published by Professor Japiot, of the Caen faculty, in 1916 under the title *Traité élémentaire de procédure civile et commerciale.*[64] This latter treatise, now in a second edition, is a continuation of an earlier important work on judicial organization, jurisdiction, and procedure which was published in a third edition by Professors Bonfils and Beauchet in 1901.

Form Books

In connection with the texts on procedure some mention should be made of the more important form books. Of these probably the best is that cited under the name Raviart, *Formulaire de procédure générale*,[65] published in 1926. Another important work of the same type is that of Chauveau

[61] Garsonnet, E., et Cézar-Bru, C. Traité théorique et pratique de procédure civile et commerciale. 3. éd. Paris, Recueil Sirey, 1912–1925. 9 v.

[62] Garsonnet, E., et Cézar-Bru, C. Précis de procédure civile. 9. éd. Paris, Recueil Sirey, 1923. 803 p.

[63] Cuche, P. Précis de procédure civile et commerciale. Paris, Dalloz, 1925. (Petits précis Dalloz. *See* Legal education. Page 31, note 57.

[64] Japiot, R. Traité élémentaire de procédure civile et commerciale. 2. éd. Paris, Rousseau, 1928. 742 p.

[65] Raviart, E., Raviart, O. et Raviart, J. Traité-formulaire de procédure générale, civile, commerciale, criminelle et administrative. Paris, Juris-classeurs, 1926. 2 v.

and Glandaz, *Formulaire général et complet.*[66] Both works give the forms applicable for commercial and administrative procedure as well as for civil procedure.

Encyclopedias

Reference should also be made to an important encyclopedia or dictionary of procedure, *Dictionnaire théorique et pratique* [67] which though published by Rousseau and Laisney in 1886–96 is still considered an important practical work.

There is no special periodical devoted to procedural matters. Interesting articles touching upon procedure and judicial organization appear from time to time in the important periodicals devoted primarily to civil law. Mention might be made in this connection of a special collection reporting court decisions and legislation concerning procedural matters, published before the war under the title *Recueil périodique de législation et de jurisprudence en matière de procédure.* Its publication began in 1880, and it appeared monthly.

Jurisdiction

Jurisdictional questions, which are often among the most subtle and difficult of application, are dealt with in the different treatises and manuals on procedure which have just been mentioned. In addition, a number of particular problems have received treatment in several important theses which are well worth mentioning.

In France, as in other countries, the jurisdiction of a particular court may depend on jurisdiction of the parties or of the subject matter of the cause of action. In civil actions the underlying theory of personal jurisdiction is contained in the maxim *Actor sequitur forum rei.* In principle the competent court is that of the domicil of the defendant. There are, however, a number of exceptions. The principal positive source of the underlying principle and its exceptions are the provisions to be found in article 59 of the Code of procedure. In commercial matters the plaintiff is allowed greater latitude. He may sue the defendant at the domicil

[66] Chauveau, A., et Glandaz, M. Formulaire général et complet de procédure civile, commerciale et administrative, annoté. 11. éd. Paris, Marchal et Billard, 1924. 2 v.

[67] Rousseau et Laisney. Dictionnaire théorique et pratique de procédure civile, commerciale, criminelle et administrative. 2. éd. Paris, Rousseau, 1886–96. 10 v.

of the latter, at the place where the promise was made and goods delivered, or the place where payment is to take place. The principal provision is 420 of the Code of procedure.

Waiver of Jurisdiction

Jurisdiction of the subject matter is sometimes designated in French legal works as jurisdiction *ratione materiae*. The distinction between jurisdiction *ratione materiae* and *ratione personae* becomes of importance with respect to the question of waiver. In principle the latter may be waived while material jurisdiction may not, the classical theory being that the former jurisdiction is relative while the latter is absolute. Waiver of jurisdiction received treatment in two important theses—the first, in order of time, by Lebas, *La prorogation de juridiction en matière civile*,[68] which was published in 1904, and the second, by Delor, *La prorogation conventionelle de juridiction en matière civile*.[69] Reference should also be made to an important thesis, consisting of a critical study of the classical distinction between absolute and relative jurisdiction, which was published in 1919 by Valin under the title, *Étude critique de la distinction de l'incompétence absolue et de l'incompétence relative*.[70] Article 420 of the Code of procedure, dealing with commercial jurisdiction, was also the subject of a critical study by Bonnet in 1912 in a thesis entitled, "*Étude critique de l'article 420 du Code de procéduce civile*."[71]

Actions by and against Foreigners

Before passing on to proof, attention should be called to the important provision of article 14 of the Civil code dealing with actions brought by French citizens against foreigners. Suits by and against foreigners will be discussed in the chapter on private international law (*infra*).

Evidence

The French lawyer is fortunate enough not to be troubled by the intricate rules of evidence which form a part of the legal system prevailing in common-law jurisdictions. While

[68] Lebas, G. De la prorogation de juridiction en matière civile. Paris, Rousseau, 1904. 175 p.

[69] Delor, L. La prorogation conventionelle de juridiction en matière civile. Paris, Pedone, 1911. 128 p.

[70] Valin, J. Étude critique de la distinction de l'incompétence absolue et de l'incompétence relative en matière civile. Dijon, 1919. 217 p.

[71] Bonnet, L. Étude critique de l'article 420 du Code de procédure civile. Lyon, 1912. 155 p.

proof in England and the United States is primarily oral, in France in civil matters it is primarily documentary, oral testimony being exceptional. As stated by Professor Capitant in his *Introduction a l'étude du droit civil* (p. 426) "it is generally admitted that the prohibition of proof by witnesses is a fundamental rule of 'our procedure.' It is only permitted in such cases as are provided for by positive law."

In the French legal system the general principles of proof, or better, methods of proof, are a part of civil law, being regulated by the Civil code (art. 1315 *et seq.*) in connection with the law of obligations. Procedural rules intervene with respect to the administration of proof before courts of justice (*cf.* Code of civ. proc., arts. 252–295, 407–414).

The general theory of proof was summarized by Professor Capitant in his *Introduction à l'étude du droit civil.*[72] In addition, the subject is dealt with in various treatises on civil law as well as, in part, in works on procedure. Though now somewhat old, the leading individual work is that of Bonnier, *Traité théorique et pratique des preuves.*[73] Professor Mohamed Sadek-Fahmy, of Cairo, is the author of a valuable comparative study of proof under the legal systems prevailing on the Continent, in England, and in the Orient which gives some notion of the contrasts between the Anglo-American and French theories. Professor Sadek-Fahmy's work was published in 1923 in the form of a thesis under the title *Le fait pertinent et admissible dans ses rapports avec la théorie générale des preuves.*[74] Legal presumptions and burden of proof received treatment in two theses—*Théorie générale des présomptions légales en droit privé,*[75] by Aron, and *Essai d'une théorie de la charge de la preuve,*[76] by

[72] Capitant, H. Introduction à l'étude du droit civil. 4. éd. Paris, Pedone, 1922. 455 p.

[73] Bonnier, E. Traité théorique et pratique des preuves en droit civil et en droit criminel. 5. éd. rev. par F. Larnaude. Paris, Plon-Nourrit, 1888. 707 p.

[74] Sadek-Fahmy, M. Le fait pertinent et admissible dans ses rapports avec la théorie générale des preuves comme élément probatoire en droit civil comparé. Paris, Dalloz, 1923. 363 p.

[75] Aron, G. Théorie générale des présomptions légales en droit privé. Paris, Pedone, 1895. 182 p.

[76] Thénevet, J. Essai d'une théorie de la charge de la preuve en matière civile et commerciale. Lyon, Legendre, 1921. 285 p.

Thévenet. An excellent discussion, in English, of the French law of evidence was published by Oliver Bodington,[77] of the Inner Temple, in 1904.

Attention should be called to the fact that the notary plays an important part in connection with proof as he prepares instruments under seal (*actes authentiques*) which are the highest form of documentary proof. Notarial practice will be referred to in connection with the discussion of the French legal profession (*infra*).

Execution

Due to the fact that execution is not included in the usual university course on procedure but forms a part of a separate optional course, several students' manuals dealing with the subject have been published. While these manuals make no pretense of being other than students' works, they are valuable sources of information as to execution under French law. These texts, which are all of the same type and approximately of the same value, include Professor Cézar-Bru's *Théorie et pratique des voies d'exécution*,[78] Professor Cuche's *Précis des voies d'exécution*,[79] and Josserand's *Précis des voies d'exécution*.[80] The last is in substance a seventh edition of a similar work by Professor Garsonnet, the sixth edition of which was revised by Professor Josserand and published under the title *Traité élémentaire des voies d'exécution*.[81]

Appellate Procedure

Before passing on to a discussion of the French bar it should be stated that actions and exceptions seem to have received no important treatment other than that contained in the general works on procedure. The same might be said of appellate procedure. The only work covering the

[77] Bodington, O. An outline of the French law of evidence. London, Stevens and sons, 1904. 199 p.

[78] Cézar-Bru, C. Théorie et pratique des voies d'exécution. 3. éd. Paris, Rousseau, 1927. 515 p.

[79] Cuche, P. Précis des voies d'exécution. Paris, Dalloz, 1926. Petit Précis Dalloz. *See* Legal education. Page 31, note 57.

[80] Josserand, L. Précis élémentaire des voies d'exécution. Paris, Recueil Sirey, 1925. Collection La Licence en droit. *See* Legal education. Page 31, note 58.

[81] Garsonnet, E. Traité élémentaire des voies d'exécution. 6. éd. rev. par J. Josserand. Paris, Recueil Sirey, 1920. Collection La Licence en droit. *See* Legal education. Page 31, note 58.

latter is that by Crépon, *Traité de l'appel en matière civile*,[82] which, like his work on the Court of Cassation, was originally published in the *Répertoire général du droit français*. Having been separately published in 1888, it is now somewhat superannuated.

Legal Profession. Avoué. Notary. Advocate

American lawyers are, of course, familiar with the distinction between the English solicitor and barrister. A somewhat similar division exists in France, where the functions of written pleading and argument are performed by different individuals. The *avoué*, who is a ministerial officer and not a member of the bar, is, with certain exceptions, alone authorized to prepare the pleadings (*postulation*). The *avocat* makes the argument before the court (*plaidoirie*) and is also authorized to give legal advice to his client. In addition, the notary who, like the *avoué*, is a public officer, performs many of the functions of the American lawyer and English solicitor. His primary duty is to prepare and preserve deeds (*actes authentiques*), of which he is legal custodian. He is also employed for other purposes, such as the drawing of wills in authentic form. Indeed, he might be compared with the English family solicitor, as he is consulted on a number of private matters such as marriages, sales and purchase of property, and investments. A short discussion of the French notary and his functions in preparing instruments under seal may be found in Planiol's elementary treatise on civil law (v. 2, p. 47). Professor Planiol also gives an extensive bibliography of the literature covering notarial practice. Mention might be made here of the latest form books. These include Amiaud's *Traité formulaire*[83] and Defrénois' *Traité pratique et formulaire*.[84] There is also a smaller form book by Defrénois.[85]

The different branches of the French legal profession were discussed by Professor Walton in the article on *Or-*

[82] Crépon, T. Traité de l'appel en matière civile. Paris, Larose et Forcel, 1888. 2 v.

[83] Amiaud, A. Traité formulaire général alphabétique et raisonné du notariat. 7. éd. Paris, Journal des notaires, 1923–26. 5 v.

[84] Defrénois, C. Traité pratique et formulaire général du notariat. Nouv. éd. rev. et mis au courant. Paris, Defrénois, 1925–26. 5 v.

[85] Defrénois, C. Petit formulaire du notariat. 7. éd. Paris, Defrénois, 1925. 674 p.

ganization of justice in France, already referred to (Law Quarterly Review, v. 19, pp. 402, 409). Like the English solicitor the French *avoué* and notary are not members of the bar. But as brought out by Professor Walton, while in England the bar is essentially a London bar, in France the bar of Paris, though the largest, is only one of many, each having a separate government.

There are a number of sources of information in English concerning the French bar. The article by Professor Walton, just mentioned, seems the most informative. An interesting historical sketch, with biographical notices of the leading advocates of the early nineteenth century, was published by Young[86] in 1869. A less valuable historical sketch by Cox-Sinclair appeared in the Law Magazine and Review for 1906 and 1907 (v. 31, p. 171; v. 32, p. 406). The articles by Paul Fuller of the New York bar in the Yale Law Journal (v. 16, p. 457; v. 23, p. 113) are of interest. Reference might also be made to a reprint of an address by Mr. Fuller,[87] made before the New York bar in 1913.

The organization of the bar, the qualifications for admission, and the rules regulating the conduct of advocates are dealt with in French works on procedure. There are also several important works devoted solely to the bar. The best for the bar as a whole is that of Appleton, *Traité de la profession d'avocat*,[88] in which the writer also gives a valuable exposé of the requisites for admission in different countries in Europe and America as well as those for admission in France. A very good work on the Paris bar was recently published by Payen and Duveau.[89] In addition, mention should be made of a thesis dealing with the rôle of a lawyer in criminal matters, published by Saillard under the title

[86] Young, A. An historical sketch of the French bar from its origin to the present day. Edinburgh, Edmonston, and Douglas, 1869. 279 p.

[87] Fuller, P. The French bar; address before the Association of the Bar of the City of New York. New York, G. P. Putnam's sons, 1913. 46 p.

[88] Appleton, J. Traité de la profession d'avocat. 2. éd. Paris, Dalloz, 1928. 717 p., 1 l.

[89] Payen, F., et Duveau, G. Les règles de la profession d'avocat et les usages du barreau de Paris. Paris, Pedone, 1926. 536 p.

Le rôle de l'avocat en matière criminelle.[90] Henri Robert, an outstanding member of the Paris bar and member of the Academy, is the author of a short work in popular style, entitled *L'avocat.*[90a]

No discussion of the literature relating to the French bar would be complete without some reference to the early work of Dupin and Camus which is in substance a fifth edition of *Lettres sur la profession d'avocat*,[91] originally published by Camus. The first volume contains a history of the early French bar, a dialogue between Loisel and members of the earlier bar, and the letters of Camus on the profession of a lawyer. The second volume contains a valuable bibliography of the then existing French and foreign legal works. As stated in the chapter on legal history, it is one of the valuable bibliographical sources of pre-code legal literature.

LABOR AND SOCIAL LEGISLATION

Labor and social movements in France have followed closely the political changes which have taken place during the course of the last century. Further, the movements have largely constituted a struggle between traditional individualism on the one hand and collectivism and state intervention on the other.

Evolution of Labor Legislation

1789 to 1841 was a period of individualism during which the accepted doctrines were those of non-intervention by the state, prohibition of combinations, and "liberty to work" (*liberté du travail*). The spirit of the times is reflected in the legislation of March 2–17, 1791, abolishing guilds, and the *loi Chapelier* forbidding trade associations and punishing persons taking part in strikes and lockouts as well as those becoming members of trade-unions. Likewise, the Penal code in articles 414–416 prohibited coalitions of employers or workmen and in articles 291–294 forbade associations of more than 20 persons. The Civil code practically

[90] Saillard, P. Le rôle de l'avocat en matière criminelle. Paris, Larose et Tenin, 1904. 244 p.

[90a] Robert, Henri. L'avocat. Paris, Hachette, 1923. 129, [3] p.

[91] Camus, A. Profession d'avocat revue par Dupin. 5. éd. Paris, Warée, 1832. 2 v.

ignored labor. The labor contract was assimilated to the contract of hire; but, while the hire of things (bailments) was regulated in detail, hire of labor and industry was dealt with in only a few articles (1779–1799), and of these only two were devoted to labor (1780–81). The insufficiency of the Code is dealt with in the general works on labor law which will be mentioned presently and in the various works concerning legislative developments after 1804, already mentioned in connection with the discussion of the Civil code. Professor Morin's *La révolte des faits*[92] gives a good exposition and the Civil code and the working classes are the subject of an article in the *Livre du centenaire.*

An important innovation was the reestablishment by Napoleon in 1806 of the *Conseils de prud'hommes* to arbitrate differences between individual employers and workmen (*infra* Labor disputes), but, in the main, what little state interference there was, was hostile to labor. The current thought of the period was founded on the doctrines of Adam Smith, Malthus, Ricardo, and Say, which, whether containing the optimism of a Smith or the pessimism of a Malthus or Ricardo, naturally led to a theory of the futility of attempting through legislation to change the workings of natural laws.

The first step in state intervention in favor of labor was taken in 1841 through the enactment of modest legislation regulating the employment of children.

The Revolution of 1848 was preceded by a number of ideas emanating from Saint-Simon, Fourrier, Considerant, and Louis Blanc, the dominant ones being the "right to work" of Fourrier and Considerant, and mutual cooperation and the *Atéliers sociaux* of Louis Blanc. The Revolution itself was the result of a coalition of the laboring and middle classes, and the provisional government was friendly to labor. While the National Assembly was less friendly, ground was gained in legislation regulating hours of labor (the second instance of state intervention in favor of labor) and in temporary

[92] Morin, G. La révolte des faits contre le Code. Paris, Grasset, 1920. 254 p.

recognition of the privilege of association and coalition; the latter privileges were, however, soon lost.

The government of Napoleon III. began as a movement of reaction, but during its second decade it became necessary to conciliate the rising tide of opposition with valuable concessions, the most important of which was the law of May 25, 1864, giving the privilege of combination. At the same time, while the influence of the labor movement during the second half of the Empire was greater than during any prior time after the first revolution, it was primarily a period of establishment of principles, with the ideas of Louis Blanc (*Organisation du travail*) [93] and of Proudhon (*De la capacité politique*) [94] predominant.

During the years immediately following the *Commune* the prime concern was the firm establishment of the Republic. After 1880, when the dangers of monarchy had been definitely averted, a number of important reforms were enacted. While not directly connected with labor, the new liberality is shown by the enactment in 1881 of a law relative to the freedom of the press. But it is with the enactment of a law of March 2, 1884, legalizing unions that the modern era of social and labor legislation began.

The year 1890 saw the enactment of laws abolishing the labor certificate (*livret ouvrier*), authorizing a cause of action for abrupt discharge of employees, thus remedying a situation growing out of the construction of article 1780 of the Civil code, and of laws providing for labor participation in the supervision of safety in mines. An act of 1892 regulated labor of women and children, and in 1893 important legislation relating to hygiene, safety, and medical attention was enacted. Subsequently, in 1898, a Workmen's compensation act was adopted.

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[93] Blanc, Louis. Organisation du travail. Paris, Administration de librairie, 1841. 224 p.

[94] Proudhon, P. De la capacité politique des classes ouvrières. An edition with an introduction and notes was published in 1924 by M. Leroy. Paris, Rivière. The same publisher, Rivière, is now engaged in publishing Proudhon's complete works. The collection will comprise approximately 20 v.

At the 1898 elections, when issues were clouded by the Dreyfus affair, the socialists, who had been gaining rapidly in power, did no more than maintain their position. A number of parliamentary groups united, however, under the leadership of Millerand, who became Minister of Commerce in the cabinet of Waldeck-Rousseau.

When Millerand entered on his duties, a series of revolutionary strikes threatened to stand in the way of carrying out a social program. Nevertheless, the minister proposed to strengthen the unions and carry through a number of important reforms for the benefit of the laboring class as a whole. Without stopping to enumerate the various reforms, mention should be made of the legislation of March 30, 1900, providing for a 10-hour day.

In the two succeeding legislatures, in which the socialists played an important and often decisive part, there was no interruption in social legislation. Among the important laws were those of 1904 establishing gratuitous employment agencies and of 1905 providing aid for the aged and infirm. Subsequently, in 1906, a weekly day of rest was provided for; 1910 saw the enactment of legislation providing for social insurance; and more recently (April 5, 1928) an entirely new scheme of insurance was adopted (*infra*).

During the war and since its conclusion a number of legislative provisions have been adopted. The more important include an act of 1915 providing for a minimum wage for home work and an act of 1917 establishing a 5½-day week for workers in the clothing industry. The important postwar legislation was that of 1919 concerning collective labor contracts, prohibiting night work in bakeries, and extending the principles of the earlier Workmen's compensation act so as to include industrial diseases. To these enactments should be added the inauguration of the 8-hour day. In 1920 Parliament enacted legislation enlarging the legal capacity of unions.

It is apparent from this necessarily short survey, with its incomplete list of enactments, that in France, as elsewhere, there has been a steady march toward state intervention. It is also apparent that the Third Republic is being

used as a vehicle for bringing about social justice through democratic government.

The history of economic and social movements in France has been dealt with in one form or another by a number of French writers. Most of these works are of no particular interest to lawyers, but reference should be made to Levasseur's *Histoire des classes ouvrières* [95] which gives an excellent exposition of social movements, with their resulting legislation. Various French works on labor and social legislation, which will be discussed presently, give historical outlines of the development of legislation. A very good summary may be found in Professor Scelle's *Précis.*[96] An interesting study in English of the labor movement in England and France, with a summary of legislation, is contained in Professor Pipkin's recent work, *The idea of social justice.*[97]

Social and Labor Code

French labor and social legislation has been fragmentary, with the result that the multitude of laws has been spread among legislative enactments adopted from day to day without any coordination. Following the example of other continental countries, steps were taken in 1901—through the establishment of an extra-parliamentary commission for that purpose—for the compilation in one body, in the form of a code, of social and labor legislative provisions. After four years of labor this commission prepared a social and labor code (*Code du travail et de la prévoyance sociale*) intended to consist of seven books, of which the first four have been definitely adopted. The first book, promulgated in 1910, is entitled *Des conventions relatives au travail* and deals with apprenticeship, hire of services, wages, exemption of wages from garnishment, and employment

[95] Levasseur, E. Histoire des classes ouvrières et de l'industrie en France. Paris, Rousseau. Part 1—avant 1789. 2. ed. 1900–01. 2 v. Part 2—de 1789 à 1870. 2. ed. 1903–4. 2 v. Part 3—Questions ouvrières et industrielles en France sous la 3e République. 1907. lxxii, 968 p.

[96] Scelle, G. Précis élémentaire de législation industrielle. Paris, Recueil Sirey, 1927. 366 p. (Collection; La Licence en droit. Page 31, note 58.

[97] Pipkin C. W. The idea of social justice. New York, The Macmillan Co., 1927. 595 p.

bureaus. The second book, promulgated in 1912, is entitled *De la réglementation du travail.* It deals with the employment of children, hours of labor, night work, a weekly day of rest and holidays, health and safety regulations, and inspection. The third book, promulgated in 1927, is entitled *Des groupements professionnels.* It deals with trade-unions and labor cooperatives. The fourth book, entitled *De la juridiction, De la conciliation et de l'arbitrage, De la représentation professionnelle* was promulgated in 1924 and deals with labor tribunals (*Conseils de prud, hommes*), conciliation and arbitration of collective differences between employers and employees, and the establishment of committees of concilation and councils of arbitration.

There are several compilations of labor and social legislation. A convenient one is the *Code du travail*[98] published by Dalloz as a part of its collection of *Petits codes.* It gives the first four books of the labor and social code, and in an appendix sets forth the non-codified legislative provisions and decrees relating to labor and social matters. A similar compilation was published by Sirey under the direction of Professor Raynaud[99] as a part of the *Petits codes Œarpentier.* Another compilation is that of Sumien and Groussier,[1] covering, however, only the first two books of the Labor code.

A number of student texts deal with labor legislation as a whole. A very good comprehensive and probably the best work is the *Traité élémentaire*[2] by Professor Pic. Professors Capitant and Cuche are the authors of a text, *Cours de*

[98] Dalloz. Code du travail et de la prévoyance sociale avec supplément. Paris, Dalloz, 1928. 2 v. in 1. 1,036 p.

[99] Raynaud, B. Code du travail. Paris, Recueil Sirey, 1925. 591 p. Supplément, 1927. 1 p. l., 111, [1] p. Supplement, 1928. 1 p. l., 62, [1] p.

[1] Sumien, P. et Groussier, A. Code du travail et de la prévoyance sociale. Paris, Plon-Nourriet et cie. Livre I: Des conventions relative au travail, 1911. Livre II: De la réglementation du travail, 1913.

[2] Pic, P. Traité élémentaire de législation industrielle. Les lois ouvrières. 5. éd. Paris, Rousseau, 1922. 1,043 p. Supplément, 1925. 35 p.

législation industrielle,[3] which covers combinations, unions, strikes, the labor contract, and regulation of labor conditions. It was published in 1921 and has the reputation of being an excellent work from the point of view of clarity of style as well as content. The same writers recently published a *Précis de législation industrielle*.[4] Another important and very good text is the *Cours élémentaire*[5] by Professor Bry, the sixth edition of which was revised and published by Professor Perreau in 1921. Two recent short texts, one by Professor Raynaud,[6] of the Law faculty of the University of Aix-Marseilles, and the other by Professor Scelle,[7] of the University of Dijon, give excellent summaries of existing legislation. As already stated, that of the latter gives a particularly good summary of the history of French labor and social movements. Professor Scelle is also the author of an earlier work, *Le droit ouvrier*,[8] published in 1922. It gives a good account of the then existing legislation. Reference is also sometimes made to the recent *Manuel pratique*[9] of Bovier-Lapierre, but this work, supposed to be a practical guide, is not generally considered to be of outstanding value.

Labor Contracts

Positive provisions of French law recognize, in addition to apprenticeships, two types of contracts between employer and employee: the individual contract and the collective agreement. As already indicated the existing legislative provisions are contained in the second book of the Labor code.

[3] Capitant, H. et Cuche, P. Cours de législation industrielle. 2. éd. Paris, Dalloz, 1921. 566 p.

[4] Capitant, H. et Cuche, P. Précis de législation industrielle. Paris, Dalloz, 1927. 450 p.

[5] Bry, G. Cours élémentaire de législation industrielle: I. Les lois du travail industriel et de prévoyance sociale; législation ouvrière. 6. éd. rev. par E. H. Perreau. Paris, Recueil Sirey, 1921. 942 p.

[6] Raynaud, B. Manuel de législation industrielle. Nouv. éd. Paris, de Boccard, 1927. 427 p.

[7] Scelle, G. Précis élémentaire de législation industrielle. Paris, Recrueil Sirey, 1927. 366 p. *See* La licence en droit, Legal education. Page 31, note 58.

[8] Scelle, G. Le droit ouvrier. Tableau de la législation française actuelle. Paris, Colin, 1922. 212 p.

[9] Bovier-Lapierre. Manuel pratique de législation du travail. Paris, Eyrolles, 1927. 320 p.

The individual contract was originally solely regulated by articles 1780 and 1781 of the Civil code. Article 1781, establishing a harsh rule of proof on the oath of the employer, was repealed in 1868 and article 1780 has undergone important amendments since 1804. While either party may terminate, at will, a contract for an undetermined period, as it now appears in the Civil and Labor codes, article 1780, as the result of an amendment of 1890, provides that such termination may give rise to a cause of action.

Contracts of employment are discussed in both works on labor legislation and treatises on civil law, in the former under the title *Contrat du travail*, and in the latter, usually, under the heading *Louage d'ouvrage*. A very good separate study of jurisprudence and legislation was published as a thesis in 1912 by Martini under the title *La notion du contrat du travail.*[10]

Collective Contract

In his *Précis* Professor Scelle compares the collective agreement to a treaty. While it usually contains as its principal clause one regulating wages, it also, ordinarily, regulates the conditions under which employees are to work, and often contains a stipulation as to arbitration of labor disputes. Prior to 1919, French courts in giving a cause of action for breach of a collective agreement, had recourse to article 1134 of the Civil code, but there was always a certain degree of uncertainty as to its effect, depending on the particular contract to which it was assimilated. The present law, an act of 1919, grew out of projects proposed by Doumergue in 1906 and by Viviani in 1910. The act itself authorizes agreements between representatives of a union or other groups of employees, on the one hand, and a group of employers, or several employers contracting individually or even one employer, on the other.

The collective agreement has been the subject of several theses which merit mention. The nature of the collective contract and its evolution are dealt with by Crépin in his *La convention collective.*[11] An excellent exposition of the

[10] Martini, A. La notion du contrat de travail; étude jurisprudentielle, doctrinale et législative. Paris, Juris-classeurs, 1912. 355 p.

[11] Crépin, H. La convention collective du travail. Sa nature et son évolution historique, loi du 25 mars, 1919. Paris, Jouve, 1919. 227 p.

legal nature of the contract is contained in Brethe's *De la nature juridique de la convention de travail.*[12] Reference is also sometimes made to two theses, written before the act of 1919, one by Professor Rouast,[13] now of the Paris Law School, and another by Professor Raynaud,[14] now of the University of Aix-Marseilles. Professor Raynaud[15] is also the author of a later work in the nature of a guide which discusses the economic and juristic nature of the collective contract as well as its practical phases.

Minimum Wage

Mention has already been made of the fact that an act of 1915 made provision for a minimum wage for women home workers in the clothing industry. This legislation is contained in the first chapter of the third title of the first book of the Labor and social code (art. 33 *et seq.*). Its original scope has been extended to several allied industries as the result of subsequent decrees. A very good short commentary on the act of 1915 was published in 1916 by Tourret.[16] There is also a short thesis by Bouchard,[17] which is sometimes referred to.

Employment Bureaus

The various texts on labor legislation devote a few pages to employment bureaus. Gratuitous municipal bureaus were provided for and regulated by an act of 1904 and one of 1925, both acts appearing in the Labor and social code. There is a good commentary on the earlier legislation, *La réglementation nouvelle*[18] by Fontaine.

Considerable space is devoted to a discussion of child labor, hours of labor, days of rest, and hygiene and safety regulations under the heading *Conditions de travail.* A very

[12] Brethe, J. De la nature juridique de la convention collective de travail. Bordeaux, 1921. 199 p.

[13] Rouast, A. Essai sur la notion juridique de contrat collectif dans le droit des obligations. Lyon, 1909. 434 p.

[14] Raynaud, B. Le contrat collectif du travail. Paris, Rousseau, 1901. 365 p.

[15] Raynaud, B. Le contrat collectif en France. Paris, Rousseau, 1921. 292 p.

[16] Tourret, J. Le salaire minimum des ouvrières à domicile (loi du 10 juillet 1915). Paris, Recueil Sirey, 1916. 149 p.

[17] Bouchard, G. Le minimum de salaire dans l'industrie du vêtement. Paris, 1927. 74 p.

[18] Fontaine, A., et Picquenard, C. La réglementation nouvelle des bureaux de placement. Paris, Dupont, 1905. 1,139 p.

good commentary, *La protection légale des travailleurs*,[19] was published in 1910 by Professor Jay, of Paris. Necessarily, it does not deal with legislation enacted during the war and establishing a Saturday half holiday for certain classes of workers nor with recent legislation providing for an 8-hour day.

There is no outstanding work of a legal character dealing with labor unions. They are dealt with, however, in the general texts already mentioned and their evolution is described by Paul Louis in his *Histoire du mouvement syndical*.[20]

Labor Disputes

Individual and collective conflicts between employer and employee come within the jurisdiction of separate tribunals under French law. Individual conflicts are within the jurisdiction of the *Conseils de prud'hommes*, reestablished by Napoleon and now regulated by the fundamental act of March 27, 1907, modified in several respects in 1919, 1920, and 1921, and incorporated in the Labor and social code in 1924. This court, composed of an equal number of workmen and employers, now has jurisdiction of controversies between employers and workmen in commerce, industry, and transportation. Its organization and jurisdiction are dealt with in a treatise by Bloch and Chaumel,[21] published in 1912. No provision is made for compulsory conciliation and arbitration of collective disputes but machinery for their settlement was provided for through authorization, in an act of 1892, of optional submission of conflicts to committees of conciliation and councils of arbitration. There seems to be a growing opinion in favor of compulsory settlement.

WORKMEN'S COMPENSATION—INDUSTRIAL ACCIDENTS

Prior to 1898, in spite of doctrinal criticism, French courts, basing their decisions on article 1382 of the Civil code,

[19] Jay, R. La protection légale des travailleurs. 2. éd. Paris, Larose et Tenin, 1910. 436 p.

[20] Louis, P. Histoire du mouvement syndical en France. (1789–1910.) 3. éd. Paris, Alcan, 1920. 2 p. l., x, 282 p., 2 l.

[21] Bloch, R. et Chaumel, H. Traité théorique et pratique des Conseils de prud'hommes. Nouv. éd. Paris, Dalloz, 1925. 562 p.

consistently held that an injured employee was without redress against his employer unless he discharged the burden of proving fault. As a result, due to the ordinarily practical impossibility of sustaining the burden of proof, even where there was fault, the French worker was in most cases of industrial accidents without relief. As early as 1880 it was proposed to amend the Civil code so as to shift the burden of proof to the employer by establishing a presumption of fault, with the result that where the cause of accident was unknown the duty of making indemnity would fall on the employer—because of his inability to meet the burden of proving lack of fault.

At the same time there was a strong doctrinal opinion in favor of a view to the effect that the responsibility of the employer grew out of the contract of hiring itself and not out of a theory of delictual responsibility as established under article 1382. According to this view the employer was under a contractual duty to take every necessary precaution to avoid injury through accidents. Supposedly, under the general rules of proof, the contract of hiring having been established, the burden of proof would shift to the employer. Without success in France, the theory of contractual responsibility was admitted by the Court of Cassation of Belgium, which, however, took the position that the burden of proving that the employer had not fulfilled his contract was on the employee, a result which gave the employee no relief. A decision of the Civil chamber of the French Court of Cassation rendered in 1896 seemed, even before the legislative reform, to have established liability on the basis of responsibility as proprietor of a thing causing injury to another (*cf.* D. P. (*i. e.*, Dalloz–périodique) 97.1.433 and S. (*i. e.*, Sirey—Recueil général) 97.1.17. Civil code, 1384). But all questions arising out of the amendment of the Civil code or the application of its provisions were definitely cut short by the legislation of April 9, 1898, placing the burden of industrial accidents on employers. Attacked at first, the revolutionary theory of responsibility without fault has been extended both with respect to industries and employment and scope of responsibility, so that at present it includes employees in practically all but the liberal professions, government administra-

tion, schools, and hospitals. Existing legislation also provides for compensation for industrial diseases as well as for injuries from accidents. Some criticism has been made of the present law because it does not provide for compulsory insurance by the employer and a simplified procedure in special tribunals. In his *Précis*, Professor Scelle takes the position that if the scope of the law were extended so as to include all employees (it has been proposed so to extend the benefits of the present law) and provision were made for special tribunals, the French system could be numbered among the best.

By far the best work on workmen's compensation is Sachet's *Traité théorique et pratique*,[22] a seventh edition of which was published in 1926 in three volumes. There is also a short supplement which appeared in 1927. There are two other very good works, the last editions of which are, however, earlier than the seventh editions of Sachet's treatise. Cabouat's treatise,[23] of which only two volumes were published, appeared between 1901 and 1907. Cabouat is also the author of a somewhat later work dealing with the extension of the principles of the act of 1898.[24] The other is Loubat's *Traité sur le risque professionel*.[25] Attention should be called to the fact that valuable discussions of the liability of employers appear in the leading treatises on civil law, usually in connection with the contract of hiring.

The act of 1898, as amended, is reported in a number of publications. Dalloz publishes a *Code des accidents du*

[22] Sachet, A. Traité théorique et pratique de la législation sur les accidents du travail et les maladies professionnelles. 7. éd. Paris, Recueil Sirey, 1926. 3 v. Supplément: Loi du 30 avril 1926. Paris, Sirey, 1927. 31 p.

[23] Cabouat, J. Traité des accidents du travail. Paris, Larose et Tenin, 1901–07. 2 v.

[24] Cabouat, J. De l'extension du risque professionel aux entreprises commerciales, aux employeurs et employés non assujettés et aux délégués à la sécurité des ouvriers mineurs. Paris, Recueil Sirey, 1914–16. 2 v.

[25] Loubat, G. Traité sur le risque professionnel; ou, Commentaire de la loi du 9 avril 1898, concernant les responsabilités des accidents dont les ouvriers sont victimes dans leur travail. 3. éd. Paris, Pichon & Durand-Auzias, 1906–7. 2 v.

travail,[26] part of the series of *Petits codes*, and the act is also reported in the *Code civil* and *Code du travail* of the same series.

SOCIAL INSURANCE

Until the early part of 1928 France had lagged behind her neighbor, Germany, in social insurance legislation. The then existing law was the act of 1910 as modified by the financial law of 1912. Provision was made for both optional and compulsory insurance. The latter included protection against old age and invalidity, but insurance against illness and unemployment were optional. Compulsory insurance was at first limited to wage earners earning 5,000 francs a year, but in 1922 the amount was increased to 10,000 francs. At the same time wage earners earning more than 10,000 francs but less than 12,000 francs were permitted to take out all types of insurance. Others, such as small farmers and employers, were also permitted to take advantage of the act, both with respect to its compulsory and voluntary features. Contribution was tripartite, the insured, the employer, and the state contributing. The partial failure of this legislation was due to opposition from both the employer and working classes and to the fact that sufficient means for the enforcement of the compulsory features were not provided for. There seem also to have been unnecessary complications in the process of administration.

The present scheme was the result of a growing opinion that social insurance is desirable and that to be a success it must be compulsory. The influence of German legislation on the same subject was also an important factor. This latter influence was due to the fact that in Alsace and Lorraine the German régime was maintained after their annexation to France. Its retention was at first intended to be provisional, but, as the result of a decree of July 17, 1922, it became definite. From then on it was only a question of time until the class of benefits enjoyed by workers in these two provinces would be extended to all French workers.

[26] Dallos. Code des accidents dutravail. Paris, Dalloz, 1928. 490 p.

In 1919 a technical commission was appointed for the purpose of formulating a plan. Their project was presented to the Chamber of Deputies by Daniel-Vincent, Minister of Labor in the Briand Cabinet, on March 22, 1921. It was subsequently adopted by the lower house and sent to the Senate in 1924. After discussion in a number of special committees the plan was amended by the Senate and adopted by it in July of 1927. The Senate bill was adopted by the Chamber on March 14, 1928, and the law was promulgated on April 5, it appearing in the *Journal officiel* of that date.

The law, consisting of 74 articles, is divided into five titles. The first title deals with compulsory insurance, the second with administration, the third with optional insurance, and the fourth with certain transitory matters, mainly with respect to situations growing out of the earlier law. The fifth title contains certain general provisions. The first article gives the risks included within the compulsory feature of the act. These comprise illness, premature invalidity, old age, death, maternity, and unemployment. Under the heading *charge de famille* provision is made for additional benefits for children of the insured, this being a part of the effort in France to increase the birth rate. Those coming within the compulsory features of the new law include wage earners and agricultural workers earning not more than 18,000 francs a year. (Allowances are made for children.) The optional features of the new law apply to workers, such as farmers, artisans, and intellectual workers, who are not employes or wage earners and whose earnings do not exceed the limits fixed for wage earners.

It should be remarked that the present law differs in detail from the German law which is to remain in force in Alsace and Lorraine until such future date as may be fixed by the French parliament.

Social insurance is usually discussed in the texts on labor law which have already been mentioned. Those in sufficiently late editions devote some space to the new plan as proposed in 1921. A good summary may be found in Professor Scelle's *Précis*. The new law has been the subject of

a commentary by Picard,[27] professor at the University of Lille, and a *Guide pratique*[28] has been published by Professor Antonelli, of Lyon. There is also a *Guide pratique* by H. Solus,[29] who, in addition, recently published another work on the operation of the new law.[29a]

CRIMINAL LAW

At the 1926 meeting of the Association of American Law Schools, Dean Pound, of Harvard, called attention to the fact that the teaching profession in the law schools of the United States has taken comparatively little interest in the development of criminal law (v. 12, Iowa Law Review, p. 105). An examination of the leading modern French texts will reveal that they represent the work of members of French faculties who, in addition to contributing their legal knowledge to the advancement of the administration of criminal justice, also discuss some of the problems which fall within the domain of criminology and penology and which are practically universally omitted from American works. Current views of the larger questions involved in the administration of criminal law necessarily have their influence on the legislator and judge and it is believed that they merit some reference in connection with a discussion of the development of criminal law in France.

Evolution of Criminal Law

The criminal law of monarchical period was marked by the elements which characterized that in force in all countries at the time. The underlying bases were vengeance and intimidation which naturally led to an exaggeration of severity both with respect to the number of crimes and their punishment. The philosophers of the eighteenth century, Diderot, Voltaire, Montesquieu, and others, protested against the excesses brought about by current governmental views with

[27] Picard, R. Les assurances sociales. Paris, Juris-classeurs, 1928. 153 p.

[28] Antonelli, E. Guide pratique des assurances sociales. Paris, Payot, 1928. 229 p.

[29] Solus, H. Qu'est ce que les assurances sociales? Guide pratique et texte annoté de la loi du 5 avril, 1928. Paris, Sirey, 1928. 235 p.

[29a] Solus, H. Comment fonctionnent les assurances sociales? Guide pratique et texte annoté du décret de 30 mars 1929. Paris, Sirey, 1929. 300 p.

the result that important reforms were undertaken by the revolutionary régime. In 1790 the Constituent Assembly, applying the principles of the Declaration of the rights of man, proclaimed equality before the law. In the following year it promulgated the most important piece of criminal legislation prior to the Napoleonic codes, a Penal code, the principles of which are dealt with in a thesis by Rémy, *Les principles généraux du Code pénal de 1791.*[30] The principal reforms of the revolutionary period were the limitation of criminal acts to those harmful to society and reduction in the severity of punishment. At the same time, through excessive reaction against the *ancien régime* life imprisonment was abolished and the duration of imprisonment automatically fixed in advance with the result that the judge's rôle was limited to arbitrary application of the law. Under the convention further revision of criminal law was considered; but the Code of 1795, the work of the noted jurisconsult Merlin, was more in the nature of a law providing for rules of procedure than a Penal code.

The codes of the revolutionary régime, in spite of the progress made, were too concise and too hastily compiled to be of long duration. Both were replaced under the Empire by a Penal code and a Code of criminal procedure. The Penal code of 1810, the last of the imperial codes and, as revised, the present principal source of criminal law, was compiled at a time when it was necessary to reestablish order. Particularly severe, it revived a number of forms of punishment which had been abolished during the Revolution, such as confiscation of property, mutilation preceding the execution of the death sentence in the case of parricides, and life imprisonment. While provision was made for maximum and minimum penalties, judges were required to follow the limits fixed by the legislature. One of the results of the excessive severity of the Code and the limitations placed on the sentence applied by the judge was an increase in the number of acquittals at the hands of the jury which adopted this method of applying in its fashion a theory of individualization of punishment. The increase in the num-

[30] Rémy, H. Les principes généraux du Code pénal de 1791. Paris, 1910. 256 p.

ber of acquittals raised a question of the wisdom of the existing system of administration of justice.

A new philosophical doctrine developed. Combining the idea of expiation developed by Kant and that of social security contained in the works of Bentham, the statesman and historian Guizot, in his treatise *De la peine de mort en matière politique*,[31] the philosopher Jouffroy in his *Cours du droit naturel*[32] and Rossi, professor at Geneva and Paris, in his *Traité du droit pénal*,[33] as well as other writers of the time, notably Cousin, advocated a system characterized by limitation of punishment to the requirements of social safety and justice. An element of moral atonement was added by Lucas in different works on prison reform; mention might be made of *Du système pénal et répressif*,[34] and *Du système pénitentiaire en Europe et aux États-Unis*.[35]

Under the influence of these ideas the Penal code was revised in 1832 and published in a second and last edition. The severity of the earlier law was reduced and various forms of punishment done away with. The jury was given the power of determining the existence of extenuating circumstances, and political crimes were to some extent differentiated from those dealt with in the Code.

The Penal code as revised might be subjected to two classes of criticism, the first directed against its technical arrangement or method and the second based on the underlying theories which brought about its revision. The second only will be discussed at this point.

As already stated, the underlying theories of the philosophical thought preceding the revision of 1832 were expiation and social security, but as brought out by Professor

[31] Guizot, F. De la peine de mort en matière politique. Paris, Béchet ainé, 1828. 185 p.

[32] Jouffroy, T. Cours de droit naturel professé à la Faculté des lettres de Paris. 1. ed. 1833–35. 2 v. 5. éd. Paris, Hachette, 1876. 2 v.

[33] Rossi, P. Traité du droit pénal. 4. éd. rev. par Faustin-Hélie. Paris, Guillaumin, 1872. 2 v.

[34] Lucas, C. Du système pénal et du système répressif en général, de la peine de mort en particulier. Paris, Béchet, 1827. 424 p.

[35] Lucas, C. Du système pénitentiaire en Europe et aux États-Unis. Paris, 1828–31. 3 v.

Roux in his recent *Cours de droit criminel français*,[36] the classical school of the early part of the last century, while responsible for notable reforms, particularly with respect to punishment, studied the application of criminal law from the viewpoint of crime in the abstract without considering the author of the criminal act. As a result the protection of society against criminality was considered as a battle against crime rather than as one against the author of crime. The positive school of Lombroso and Ferri supplied a new method of attack.

Modern French Criminology

Translated into French,[37] the biological and sociological studies of these outstanding Italian criminologists turned attention from crime in the abstract to the criminal. Introducing a method of observation of criminals as individuals, they served the useful purpose of demonstrating that the criminal can not be dealt with successfully as a uniform type existing in the abstract but must be considered as a human being subject to varying influences. At the same time the elimination of moral responsibility, in the treatment of criminals as a whole, solely from the point of view of protection of society, gained but little support in France.

There has been, however, a fusion of the opinions of the classical school of the early part of the last century and of the Italian positivist school with a resulting formation of what might be called a neoclassical school. While conserving the principle of moral responsibility, modern French thought recognizes the necessity for classification and the variation of punishment with respect to the individual prisoner, particularly in so far as occasional and confirmed delinquents are concerned. French publicists who might be said to be identified with this new school include such emi-

[36] Roux, J. Cours de droit criminel français. Droit pénal, procédure pénale. 2. éd. Paris, Recueil Sirey, 1927. 2 v.

[37] *See* Criminal science series. Introduction, page 2, note 1, for English translations.

Lombroso, C. Le crime, causes et remèdes. 2. éd. Paris, Alcan, 1907. 583 p.

idem. L'homme criminel. 2. éd. Paris, Alcan, 1895. 2 v.

Ferri, E. La sociologie criminelle. Tr. par L. Terrier. Paris, Alcan, 1905. 640 p.

nent names as Professors Saleilles, Garraud, Vidal, Garçon, and Cuche, all of whom have been closely connected with law teaching in France.

Professor Saleilles, whose name has been mentioned in connection with his valuable studies in the field of comparative civil law, was also the author of a short study of the later schools of criminology, *Les nouvelles écoles de droit pénal*[38] and an important work on individualization of punishment, *L'individualisation de la peine.*[39] A new edition of this last work was recently published by Professor Morin. Mention should be made of the fact that a translation of the second edition appears in the *Modern criminal science series.*[40] Professor Vidal, in addition to his work on criminal law, has contributed an important study of the bases of penology as conceived by latter-day criminologists. His work, *Introduction philosophique à l'étude du droit pénal,*[41] though published in 1890, may still be consulted with profit. Two years later he published a shorter work on the anthropological Italian school under the title *État actuel de l'anthropologie criminelle.*[42] Professor Cuche is the author of an important work on penal science, *Traité de science et de législation pénitentiaires,*[43] and a shorter study of educational punishment, *Les peines éducatrices.*[44]

Professor Garçon, whose annotated edition of the penal code will be referred to presently, was also the author of

[38] Saleilles, R. Les nouvelles écoles de droit pénal. Paris, Rousseau, 1901. 29 p.

[39] Saleilles, R. L'individualisation de la peine. Étude de criminalité sociale, publiée avec la collaboration de G. Morin. 2. éd. Paris, Alcan, 1909. 3. éd. 1927. 288 p.

[40] *See* Introduction, p. 2, note 1. Saleilles. The individualization of punishment. Translated from the Second French edition by Rachel Szold Jastrow. Boston, Little, Brown and co., 1913. 322 p.

[41] Vidal, G. Introduction philosophique à l'étude du droit pénal. Principes fondamentaux de la pénalité dans les systèmes les plus modernes. Paris, Rousseau, 1890. 637 p.

[42] Vidal, G. État actuel de l'anthropologie criminelle. Paris, Rousseau, 1892.

[43] Cuche, P. Traité de science et de législation pénitentiaires. Paris, Pichon et Durand-Auzias, 1905. 510 p.

[44] Cuche, P. Les peines éducatrices. Paris, Chevalier-Marescq, 1903. 99 p.

a valuable little work on the evolution of criminal law and its present status, which was published under the title *Le droit pénal, origines, évolution, état actuel.*[45] It is generally considered to be one of the best available discussions of the evolution of French criminal law and of the present views of the purposes of penal laws.

In addition, a valuable study of repression and prevention of crime was recently published by Professor Roux,[46] of the Strasbourg Faculty, who accentuates the importance of prevention of crime as well as its suppression.

In this connection mention should also be made of the social studies of Tarde, professor of philosophy at the College of France. They include *Études pénales et sociales,*[47] consisting largely of articles previously published in various periodicals, and *La philosophie pénale,*[48] a translation of which appears in the *Modern criminal science series.*[49] The works of Joly, such as *Le crime, étude sociale,*[50] *La France criminelle,*[51] *Le combat contre le crime*[52] and *Problèmes de science criminelle,*[53] are also important. Mention may be made of a recent work on the progress of penal institutions,[54] by A. Toulemon. The studies in criminology (*Études criminologiques*) published since 1926 by the *Institut de criminologie de l'Université de Paris,* associated with the Paris Law School, are also important.

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[45] Garçon, E. Le droit pénal; origines-évolution-état actuel. Paris, Payot, 1922. 160 p.

[46] Roux, J. La défense contre le crime. Répression et prévention. Paris, Alcan, 1921. 280 p.

[47] Tarde, G. Études pénales et sociales. 2. éd. Lyon, Storck, 1892. 460 p.

[48] Tarde, G. La philosophie pénale. 5. éd. Lyon, Storck, 1900. 578 p.

[49] *See* Introduction, p. 2, note 1. Penal philosophy. By Gabriel Tarde. Translated by Rapelje Howell. Boston, Little, Brown and co., 1912. 581 p.

[50] Joly, H. Le crime; étude sociale. Paris, Cerf, 1888. 392 p.

[51] Joly, H. La France criminelle. Paris, Cerf, 1889. 431 p.

[52] Joly, H. Le combat contre le crime. Paris, Cerf, 1892. 435 p.

[53] Joly, H. Problèmes de science criminelle. Paris, Hachette, 1910. 291 p.

[54] Toulemon, A. Le progrès des institutions pénales (Essai de sociologie criminelle), Paris, 1928. 249 p.

It is usually difficult to give an exact estimate of the influence of philosophical thought on legal matters. Professor Garraud in his general treatise on criminal law gives an excellent summary of the reforms during the past century (v. 1, 168). The more important include diminution in the severity of punishment, development of the institution of extenuating circumstances through extension of the relative provisions of the Penal code, special legislation for juveniles and the distinction made between first and second offenders, all of which are closely connected with the evolution of the attitude towards crime and the criminal during the course of the nineteenth century.

Penal Code. Contents

Although amended from time to time since its revision in 1832, the Penal code still remains the principal source of criminal law. The Code itself consists of five preliminary articles and four books. The first article deals with the tripartite division of criminal acts into minor misdemeanors, serious misdemeanors (*délits*) and felonies (*crimes*) according to the nature of their punishment. Articles 2 and 3 deal with attempts. The fourth article provides for the application of the *ex post facto* doctrine to crimes and article 5 declares that the provisions of the Code are not applicable to military offenses. The first book deals with punishment of felonies and serious misdemeanors. The second book deals with responsibility for criminal acts and contains the rules applicable to accomplices, insane persons, and minors. The third book treats of particular crimes. It is divided into two titles, the first dealing with acts directed against the security of the state, counterfeiting, forgery, misfeasance in office, resistance to public authority, and similar offences, and the second with those directed against individuals and property. The fourth book deals with minor misdemeanors (*contraventions*) which are punishable by fine or simple imprisonment.

In his *Cours de droit criminel français* (p. 32, *et seq.*) Professor Roux states that though the technique of the Penal code should be irreproachable, of all the codes promulgated under the Empire, it is the least perfect. It is not always logical in its arrangement and, in addition, a number of doctrines such as fault, mistake, and necessity are not dealt with

at all, and others, to mention here insanity alone, are insufficiently treated. At the same time, the technical omissions served a useful purpose in that they permitted the courts to adapt the general provisions of the Code to the changing conditions of the last century.

Annotated Editions

Of the different large annotated editions of the Code, that by Professor Garçon,[55] a 2-volume work, which appeared between 1901 and 1906 is, by virtue of its exhaustiveness, universally considered to be much the best. Due to his experience as counsel and teacher of criminal law at the University of Paris, Professor Garçon was able to bring to his annotations a combination of practical and theoretical skill which is rarely found in a work of this kind. A third volume covering the fourth book of the Code (not included in the original work) is announced as in press. Of the other two annotated codes, those cited under the names Dalloz,[56] and Sirey,[57] the former has the advantage of later publication and, while less valuable than that of Garçon, is also of importance. It consists of an original volume published in 1886 and a supplement published in 1899. Sirey is no longer in current use. In addition to the annotated codes which have just been mentioned, the various publishers publish small pocket editions. Of these that of Dalloz,[58] appears to be the best. As in the case in the other small annotated codes forming a part of the *Petite collection Dalloz*, it contains short references to jurisprudence and, in addition, gives all the legislation pertaining to criminal matters. It should be noted that the Penal code and Code of criminal procedure appear in the same volume, the same being true of the similar work published by Sirey and cited under the name Carpentier.[59]

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[55] Garçon, E. Code pénal annoté (articles 1 à 463 du Code pénal) Paris, Recueil Sirey, 1901–06. 2 v.

[56] Dalloz. Les codes annotés d'après la doctrine et la jurisprudence: Code pénal. Paris, Dalloz, 1886. 1 v. Supplément, 1899. 1 v. 590 p.

[57] Sirey, J. et Gilbert, P. Code pénal annoté et Supplément. Paris, Marchal, 1868.

[58] Dalloz, Code d'instruction criminelle et Code pénal. Paris, Dalloz, 1928. 893 p.

[59] Carpentier, A. et E. Code d'instruction criminelle et Code pénal. Paris, Recueil Sirey, 1927. 920 p.

Turning now to the general works on criminal law we find an array of treatises which have appeared since the promulgation of the Code. Most of these are no longer of great practical value having been replaced by the *Traité théorique et pratique de droit pénal français* [60] by Professor Garraud, of the Lyon Law School, which is easily the most valuable general modern work on French criminal law. The third edition is to consist of 6 or 7 volumes of which 5 have already appeared. Mention should also be made of another important but much older work, that of Chauveau, Professor at Toulouse, and Faustin-Hélie, *Théorie du Code pénal*,[61] consisting of 6 volumes. The sixth edition was annotated by Villey, dean of the Law School of the University of Caen. In addition, a supplement, forming a seventh volume, was published in 1908 by Mesnard, a magistrate. Faustin-Hélie was also the author of another work, *Pratique criminelle des cours et tribunaux*,[62] which was recently revised by Depeiges and published in a 2-volume third edition. This work is primarily of a practical nature and is usually considered to be of far less value than that of Professor Garraud. Older texts which merit mention include Professor Boitard's popular *Leçons de droit criminel*,[63] published in a thirteenth edition in 1896; Professor Ortolan's *Éléments de droit pénal*,[64] the best of the older works for theory, and Professor Blanche's voluminous *Études pratiques sur le Code pénal*,[65] the second edition of Treatises

[60] Garraud, R. Traité théorique et pratique de droit pénal français. 3. éd. Paris, Recueil Sirey, 1913–24. 5 v.

[61] Chaveau, A., et Faustin-Hélie. Théorie du Code pénal. 6. éd. Paris, Marchal et Billard, 1887–88. 6 v. v. 7, Supplément, 1908.

[62] Faustin-Hélie, A. Pratique criminelle des cours et tribunaux. Résumé de la jurisprudence sur les codes d'instruction criminelle et pénal. 3. éd. rev. par Depeiges. Paris, Marchal et Godde, 1920. 2 v.

[63] Boitard, J. Leçons de droit criminel. 13. éd. rev. par E. Villey. Paris, Marchal et Billard, 1896. 893 p. Appendice, 51 p.

[64] Ortolan, J. Éléments de droit pénal. Pénalité, juridictions, procédure. 5. éd. rev. par A. Desjardins. Paris, Plon; Chevalier-Marescq, 1885. 2 v.

[65] Blanche, A. Études pratiques sur le Code pénal. 2. éd. annotée par G. Dutruc. Paris, Marchal et Billard, 1888–91. 7 v.

which was annotated in 1888–1891 by Dutruc. The names of other writers whose works though sometimes consulted are now largely superannuated include Molinier[66] and Trébutien.[67]

In addition to the general treatises which have just been referred to, there are a number of very good one and two volume works intended primarily for the use of students but which have practical value. Of these that by Professor Roux,[68] professor of criminal law at the University of Strasbourg, is often recommended for its clarity of style and general arrangement. Attention might be called here to the fact that Professor Roux is the author of a number of extremely interesting and valuable notes on criminal law which have appeared from time to time in the *Recueil Sirey*. The classical student's manual is Professor Garraud's *Précis de droit criminel*,[69] recently published in a fourteenth edition. Another scholarly work is that of Vidal and Magnol, *Cours de droit criminel et de science pénitentiaire*.[70] Originally the work of Professor Vidal of Toulouse, it was recently published in a seventh edition by Professor Magnol of the same faculty, this last edition being the third in the publication of which Professor Magnol cooperated. Of the shorter works on criminal law it probably gives the best exposition of the schools of thought which have from time to time influenced the development of French criminal law. Mention should be made of the fact that it also contains a valuable discussion of the various forms of punishment under French laws (book 7, p. 580 *et seq.*). Like the other shorter works on criminal law it deals with criminal procedure. While less important, Professor Degois'

[66] Molinier, V. Traité théorique et pratique de droit pénal, annoté, et mis au courant par G. Vidal. Paris, Rousseau, 1893–94. 2 v.

[67] Trébutien, E. Cours élémentaire de droit criminel. 2. éd. rev. par Laisné-Deshayes et L. Guillouard. Paris, Lahure, 1878–83. 2 v.

[68] Roux, J. Cours de droit criminel français. Droit pénal, procédure pénale. 2. éd. Paris, Recueil Sirey, 1927. 2 v.

[69] Garraud, R., et Garraud, P. Précis de droit criminel. 14. éd. Paris, Recueil Sirey, 1926. 1,118 p.

[70] Vidal,G. Cours de droit criminel et de science pénitentiaire. 7. éd. refondue par J. Magnol. Paris, Rousseau, 1928. 1,125 p.

Traité élémentaire de droit criminel[71] is also a valuable work.

Before turning to some of the more important subjects falling within the scope of the Penal code and subsequent legislation, reference should be made here to a valuable French periodical devoted to criminal law and procedure as well as to general problems of criminology, now published under the title *La revue pénitentiaire et de droit pénal.*

The literature dealing with particular topics comprised within the field of French criminal law is limited. There are, however, several subjects which are believed to be of sufficient general interest to be referred to in spite of the absence of special studies other than those contained in the general works which have already been mentioned.

Attempts

The question of criminal attempt, which may always be counted on to give rise to discussion under any legal system, was the subject of an interesting article by Professor Saleilles, *Essai sur la tentative*, which appeared in the *Revue pénitentiaire* in 1897 (p. 53) and of a thesis by Henri Gallet, *La notion de la tentative punissable.*[72]

The philosophical question as to the point at which the law should intervene in the various steps leading up to the commission of a crime as well as the punishment to be meted out when it does intervene is of itself a difficult one. The usual point of view is objective. Under this view the law should only intervene when the preparatory acts have sufficiently advanced to permit the commission of the desired result. In addition, the punishment meted out should be in proportion to the gravity of the effect and not dependent upon the state of mind of the accused. From the point of view of the Italian positivist school of thought, since the measure of punishment is not the gravity of the crime but the criminal tendencies of the accused, preparatory acts should be dealt with according to the criminal nature of the author. Article 2 of the French code, while requiring that the attempt consist of an overt act which has been inter-

[71] Degois, C. Traité élémentaire de droit criminel. 2. éd. Paris, Dalloz, 1922. 850 p.

[72] Gallet, H. La notion de la tentative punissable (essai critique). Paris, Rousseau, 1899. 363 p.

rupted by circumstances independent of the volition of the accused, adopts a subjective method of punishment in that the attempt is punished as though the intended crime had been committed. In this respect it is unique, but it should be stated tht the liberty allowed the jury in applying the doctrine of extenuating circumstances generally results in the application of a lighter form of punishment.

Extenuating Circumstances

The history of French law with respect to the effect of the existence of extenuating circumstances, not to be confused with legal excuse, is of itself an interesting one. Under the prerevolutionary *régime* the judge was allowed a wide discretion to alleviate the excessive harshness of the existing criminal law. As already noted, the legislation of 1791 through an exaggerated reaction against the abuse of arbitrary punishment took this discretion from the judge. But limited steps were taken for the reestablishment of the system in the Penal code of 1810 and legislation of 1824. With the revision of the Code in 1832 the matter was placed in the hands of the jury through modification of article 463, which, in its present form, makes provision for the modification of the punishment of the defendant on declaration by the jury of the existence of extenuating circumstances. Early views of the system may be obtained from Collard's *Du système des circonstances atténuantes* [73] and Bertin's *De la répression pénale et des circonstances atténuantes.*[74] Very good modern discussions appear in Professor Garraud's general treatise (v. 2, secs. 151 to 154) and *Précis* (p. 420 *et seq.*). Professors Vidal and Magnol and Professor Roux also give short résumés in their works on criminal law. Professors Vidal and Magnol (p. 363) mention a proposal, made some years ago, to broaden the existing system beyond its present limits by creating "very extenuating circumstances" so as to permit the jury to provide even more lenient punishment in certain cases, notable passional homicides and infanticides, in which French juries too often

[73] Collard, C. Du système des circonstances atténuantes depuis son origine, spécialement sous le Code de 1832. Paris, Hingray, 1840. 116 p.

[74] Bertin, J. De la répression pénale et des cironstances atténuantes. Paris, Durand, 1859. 48 p.

bring in a verdict of not guilty. But Professors Vidal and Magnol also call attention to the fact that there has been some reaction against the system, particularly in the years immediately preceding the war.

A fairly good discussion in English, by Herbert Bayle, appears in volume 18 of the Juridical Review (pp. 259, 341).

Habitual Criminals

While French law makes provision for the diminution of the sentence on the existence of extenuating circumstances, it is also particularly severe with respect to criminals who have already been convicted of an offense. The rules of law are contained in articles 56, 57, 58, 474, 478, and 482 of the Penal code as amended in 1891. An act of May 26, 1885, deals with deportation of habitual criminals to penal colonies. Its general purpose was to purge French soil of professional criminals who are presumed to be incorrigible because of the frequency of their conviction. The best exposition of the various circumstances under which punishment may be increased upon the commission of a subsequent offense, or where deportation to a penal colony may take place because of the frequency of conviction, is to be found in Garraud's treatise. Professors Vidal and Magnol also give a valuable discussion in their *Cours de droit criminel* (p. 396 *et seq.*).

Casier Judiciaire

In this connection reference should be made to the system of recordation and proof of prior conviction, designated under the term *Casier judiciaire*. This system is extremely simple and consists of a record kept by a clerk of each correctional court. In the case of conviction of a person born in another jurisdiction a copy of the record is sent to the clerk of that court and filed there. If the accused is a foreigner or the place of his birth is unknown the record is sent to the Ministry of Justice. Under these circumstances it is always possible to obtain the record of an accused, once convicted, by referring to the place of his birth or to the Ministry of Justice. The *casier judiciaire* has been the subject of a number of comparatively recent studies. That of Le Poittevin, *Le casier judiciaire*,[75] a

[75] Le Poittevin, G. Le casier judiciaire; étude critique sur le casier judiciaire en France et dans les pays étrangers. Paris, Rousseau, 1907. 391 p.

critical study of the French and other systems, is generally considered to be the best.

Juvenile Delinquency

Juvenile delinquency, which has occupied the thought of Americans within recent years, has also been the preoccupation of French criminologists. The existing French legislation should be of particular interest because of the influence upon it of similar legislation in the United States. The law now in force is that provided for in an act of 1912 as amended by subsequent legislation. The present age of criminal majority is 18 instead of 16, as had been the case under the Penal code. Children of 13 or less who commit serious offenses are not criminally responsible, but appear before a division of a civil court which is authorized to take special measures for their protection and care. Minors between the ages of 13 and 18, while triable before a criminal court, enjoy the benefits of certain procedural provisions which are not applicable to mature criminals. The trial court must pass on their power of discernment. If found guilty their punishment differs from that of ordinary criminals.

The legal rules concerning juveniles, in force at the time, are dealt with in the *Code manuel des tribunaux pour enfants*,[76] published in 1913 by Nast and Kleine. They are also ably discussed in the *Cours de droit criminel* of Professors Vidal and Magnol (p. 194 *et seq.*) and in the *Précis* of Professor Garraud (p. 196 *et seq.*). Both works give ample references to the general literature relating to the subject. The *Comité de défense des enfants traduits en justice* published a " code " [77] of laws pertaining to juveniles in 1904. A supplement was published in 1922 by the *Société générale des prisons*.

CRIMINAL PROCEDURE

The rules of French law relating to criminal procedure are contained in the *Code d'instruction publique* as modified

[76] Nast, M., et Kleine, M. Code manuel des tribunaux pour enfants. (Commentaire de la loi du 22 juillet 1912). Paris, Pichon et Durand-Auzias, 1913. 328 p.

[77] Code de l'enfance traduite en justice, publié par le Comité de défense des enfants traduits en justice de Paris. Paris, Rousseau, 1904. vii, 467, 477 p. Supplément. Société générale des prisons, 1922. 64 p.

by subsequent legislation. As already stated in connection with the discussion of legal history, the evolution of criminal procedure in France received valuable treatment in Professor Esmein's *Histoire de la procédure criminelle en France.*[78] The general works on the subject also contain some reference to its history.

Unlike substantive criminal law, criminal procedure was the object of codification prior to the Revolution, having been the subject of the famous ordinance of 1670. The principal characteristics of prerevolutionary procedure were the secrecy of the preparation of the accusation, its inquisitorial method, and the denial of counsel to the accused. Condemned by the philosophers of the eighteenth century, this system was not able to survive the establishment of a new theory of public law under the Revolution. The revolutionary government, influenced largely by the system of administration of criminal justice in England, made a number of radical changes, which included the establishment of a jury of presentment, a trial jury, and public hearings. The Code of criminal procedure, which was voted in 1808 but did not become effective until 1811, represents a compromise between the legislation of 1670 and the changes made during the Revolution. The laws of the latter period furnished the rules as to publicity of trial, the jury in the Court of Assize, and the simplified procedure before other courts having criminal jurisdiction. The older legislation supplied the preliminary preparation of the accusation and the separation of prosecution and accusation. The jury of presentment was replaced in the Code by a special tribunal created to bring in indictments. Subsequent legislation has to some extent modified the provisions of the Code, but it still remains the principal source of French procedural law in criminal matters.

Code of Criminal Procedure Contents

The Code consists of a number of preliminary articles and two books which are in turn divided into titles. The preliminary provisions deal with such important matters as

[78] Esmein, A. Histoire de la procédure criminelle en France et spécialement de la procédure inquisitoire, depuis le xiii[e] siècle jusqu'à nos jours. Paris, Larose et Forcel, 1882. 596 p.

civil process in connection with the public prosecution and jurisdiction. The first book is entitled *De la police judiciaire.* It treats of the officers to whom is confined the duty of ascertaining the commission of offenses (*agents de recherche*), those who prosecute and their functions (*procureurs*), and committing magistrates (*juges d'instruction*). The second book is entitled *De la justice.* The first title deals with police courts and tribunals having jurisdiction of serious misdemeanors. The second title, which is headed *Des affaires qui doivent être soumises au jury*, deals with the process of indictment by a section of a Court of Appeals and the formation of Courts of Assize. It also treats of the procedure before the latter court, the examination of the accused and witnesses, the judgment and its execution, and the manner in which the jury is selected. The third title deals with annulments of criminal process, recourse to the Court of Cassation, and revision. Attention should be called in this connection to the important provision of article 446, which as amended in 1895 provides for the allowance of damages to victims of judicial errors. The fourth title deals with procedure in certain particular matters. The fifth treats of conflicting claims to jurisdiction and their regulation and the transfer of cases from one court to another. The seventh contains diverse provisions relating to such matters as records of judgments, detention of persons accused of a crime, rehabilitation, and prescription.

Of the different annotated editions of the Code that of Le Poittevin [79] is generally conceded to be much the best. A 2-volume work which was published between 1911 and 1926, it is comparable with Garçon's annotations of the Penal code. Of the other annotated codes, those cited under the names of Dalloz [80] and Sirey et Malepeyre,[81] the former though slightly older is generally considered to be the better.

[79] Le Poittevin, G. Code d'instruction criminelle annoté. Paris, Recueil Sirey, 1911–26. 2 v. Vol. 1 and part of v. 2 have been published. The annotations cover articles 1 to 360.

[80] Dalloz. Les codes annotés d'après la doctrine et la jurisprudence: Code d'instruction criminelle. Paris, Dalloz, 1901. vi, 1329 p.

[81] Sirey, J., et Malepeyre. Les codes annotés de Sirey et Gilbert. Code d'instruction criminelle. 4. éd. Paris, Marchal et Billard, 1903. 853 p.

For practical use in connection with the first 360 articles both have, however, been replaced by Le Poittevin's work. Mention has already been made of the fact that the Code of criminal procedure is combined with the Penal code in Dalloz's and Carpentier's pocket editions.

The outstanding treatise on criminal procedure is Garraud's *Traité théorique et pratique d'instruction criminelle et de procédure pénale*,[82] representing the work of Professor Garraud and his son. Faustin-Hélie's *Traité de l'instruction criminelle*,[83] an 8-volume treatise, published between 1866 and 1867, was long the classic work. In this connection it may be well to again call attention to the fact that criminal procedure is also dealt with in elementary works on criminal law.

As is the case with respect to substantive law, there is very little literature of value dealing with the particular subdivisions of the Code. They are fully dealt with in Garraud's treatise. For short, clear discussions of such matters as the organization of the criminal courts, the jury, and the duties of the committing magistrate, the second volume of Professor Roux' *Cours de droit criminel* is recommended. In addition, Professor Roux gives excellent summaries of such matters as appeals, procedure before the Court of Cassation, and revision. Professor Garraud's *Précis* is also valuable in this connection.

Trial

An American or English observer of a felony trial in the Court of Assize is apt to be struck by the absence of examination and cross-examination by counsel, the absence of rules of evidence as understood in England and America, the predominating position of the president of the court, and the seeming lack of safeguards to the accused which we deem essential to a fair and impartial trial. These striking differences have led to an abundant literature, consisting of notes and articles, in Anglo-American periodicals, which,

[82] Garraud, R., et Garraud, P. Traité théorique et pratique d'instruction criminelle et de procédure pénale. Paris, Larose & Tenin, 1907–29. 6 v.

[83] Faustin-Hélie, A. Traité de l'instruction criminelle, ou théorie du Code d'instruction criminelle. 2. éd. Paris, Plon, 1866–67. 8 v.

in the main, has been uncomplimentary to the French system.[84] It should be borne in mind, however, that the common law prevails only in English-speaking communities and that the French system, or something similar to it, is in effect on the Continent, where the administration of criminal justice is, generally, more efficient than in the United States. In the Court of Assize, instead of having one judge presiding, there are three. The case against the accused is presented by the president of the tribunal following the reading of the indictment. His presentation is usually followed by examination of the defendant, after which the witnesses are called. While attorneys may at the discretion of the court ask questions through the president, they have no right to examine the witnesses nor the defendant, who give their testimony in narrative form without regard to such limitations as hearsay and opinion. The rôle of the attorney for the defendant seems to be limited to a discussion of the testimony of a witness immediately after it has been given and to his summing up and rebuttal. As already pointed out, the jury, in addition to passing on the facts of the case, may determine the existence or nonexistence of extenuating circumstances. It should be recalled that the jury was an innovation introduced from England during the Revolution. Like the English jury it consists of 12 members, whose qualifications are now governed by an act of 1872, but unlike the system prevailing in England a majority is sufficient for a verdict. If the jury are divided equally, the defendant is acquitted. That the accused, when he gets before the Court of Assize, is in a defensive position may appear shocking to those accustomed to the presumption of innocence as it prevails in England and the United States. That this

[84] A large part of the periodical literature, in English, is not of sufficient merit to be worthy of citation. Citations to articles and notes may be found in the Index to Legal Periodicals under the headings France and Criminal law. The most comprehensive article appears to be Professor Garner's Criminal procedure in France, 25 Yale Law Journal 255. Other articles include short comments by Thomas Barclay and Frederic Coudert, respectively, in 10 Harvard Law Review 46 and 19 Yale Law Journal 326; Ferrari's Procedure in the Cour d'Assize, 18 Columbia Law Review 43; and an interesting "eye-witness" account by "Docket" in 47 American Law Review 300.

is true in practice in France is due to the fact that the case has undergone thorough investigation by an investigating judge and that the defendant has been indicted by the "Chamber of indictment." The investigating judge, or committing magistrate (*juge d'instruction*), gathers all the facts of the case and of the defendant's past life which can have any bearing on the commission of the crime. A report, as a part of the record, is sent to the trial court after indictment. The indictment, instead of being found by a grand jury of laymen, is the result of an investigation by a special tribunal consisting of three judges (*Chambre d'accusation*) and forming a section of the Court of Appeals. It is not surprising, therefore, that the Court of Assize recognizes that the accused should explain why he is before it.

The jurisdiction of the Court of Assize is limited to felonies (*crimes*). Minor and serious misdemeanors are tried, respectively, before a police court, consisting of a justice of the peace, and what is called a "correctional" court, consisting of judges who are also members of a court of original civil jurisdiction.

Jurisdiction. International Penal Law

As might be expected, the different international questions arising out of the application of penal law are of greater interest to Continentals than to Anglo-Americans. They have received treatment by a number of continental writers, among whom should be mentioned Dr. Travers, who deals with the French doctrines of criminal jurisdiction, as well as with other international penal questions, in his outstanding *Traité de droit pénal international.*[85] Jurisdiction is dealt with in the *Introduction à l'étude du droit pénal international*[86] by Professor Donnedieu de Vabres, who is also the author of an important recent work[87] dealing

[85] Travers, M. Traité de droit pénal international et sa mise en oeuvre en temps de paix et en temps de guerre. Paris, Recueil Sirey, 1920–21. 5 v.

[86] Donnedieu de Vabres, H. Introduction à l'étude du droit pénal international; essai d'histoire et de critique sur la compétence criminelle dans les rapports avec l'étranger. Paris, Recueil Sirey, 1921. 482 p.

[87] Donnedieu de Vabres, H. Les principes modernes de droit pénal international. Paris, Sirey, 1928. 470 p.

with modern principles of international penal law. The first work is devoted primarily to French law.

The French rules of jurisdiction, combining as they do a territorial and personal theory, are of sufficient interest to merit some attention. Under the provisions of articles 5 and 6 of the Code, a French citizen who commits a felony (*crime*) abroad is subject to French law. If the act consists of a serious misdemeanor (*délit*) the author is punishable in France, but only if it is also prohibited by the law of the place where committed. In either case the author is not punishable under French law if he has been tried abroad and, in case of conviction, has served the sentence or been pardoned.

Strangely enough, the application of French criminal law to acts committed in France by foreigners is governed primarily by the provisions of the Civil code, the third article of which provides that the laws of police and public safety are applicable to those who inhabit the territory. In 1903 territorial sovereignty was in part relinquished in an act of April 3 which provided that a foreigner who has committed a crime or serious misdemeanor in France is not triable there if tried abroad and, in case of conviction, has served his sentence or been pardoned. It should also be noted that article 7 of the Code of criminal procedure, as amended in 1866, adopts a rule which is not unusual in providing for punishment in France of acts committed abroad by foreigners, when such acts consist of counterfeiting the seal of the Government, governmental papers or money, or are directed against the safety of the state. The mere fact that the victim of a crime committed abroad is French does not confer jurisdiction.

Among the individual traits of French law pertaining to procedure, mention should be made of the possibility of the intervention of the party injured in the public prosecution as the *partie civile* and the provisions made for compensation to a person who has been the victim of an erroneous conviction, presently to be discussed.

Article 3 of the Code of criminal procedure states that a civil action may be brought at the same time and before the same court as the public prosecution, thus making provision

for the union in one proceeding of the action of the state and that of the individual injured. In addition to the discussions contained in the general works on criminal law and procedure, the matter is also specially dealt with in an old but still important work by Mangin, *Traité de l'action publique et de l'action civile en matière criminelle*,[88] which, as its title indicates, deals in general with public criminal prosecution and civil actions in criminal matters. An interesting discussion, in English, by Doctor Lapie, of the Paris bar, may be found in volume 10 of the Journal of Comparative Legislation (p. 33, 3d series).

The important French rules as to compensation to a victim of an error in the administration of criminal justice are provided for in article 446 of the Code of criminal procedure in connection with the general subject of revision of judgments. This provision received valuable treatment by Professor Borchard in an article entitled *European systems of state indemnity for errors of criminal justice*, which appeared in the Journal of the American Institute of Criminal Law for 1912–13 (p. 684). Appeal and revision were also discussed by Doctor Weber, of the French bar, in an article appearing in the Juridical Review of 1899 (v. 11, p. 26).

MILITARY LAW

As already stated, special separate provision for the prosecution and punishment of crimes committed by members of the public land and naval forces was made by the promulgation of two codes in 1857 and 1858, *Code de justice militaire pour l'Armée de terre* and *Code de justice pour l'Armée de mer*. The military codes make provision for three categories of crimes—military crimes in a strict sense, comprising crimes which consist, particularly, of failure by soldiers and sailors to fulfil some professional duty, such as revolt, insubordination, or desertion; criminal acts committed by soldiers and sailors which, while ordinarily criminal, are more severely punished under the terms of the military codes, including

[88] Mangin, C. Traité de l'action publique et de l'action civile en matière criminelle. 3. éd. revised by A. Sorel. Paris, Larose, 1876. 2 v.

such acts as theft of military stores and falsification; and crimes by members of the land and naval forces which are subject to the same punishment as those committed by civilians.

Military crimes are triable before special courts, comprising courts-martial and maritime tribunals. In addition to a difference in jurisdiction, they are also subject to certain differences with respect to the application of the laws dealing with second offenses, deportation, and extradition, all of which are summarized by Professors Vidal and Magnol in their *Cours de droit criminel et de science pénitentiaire* (p. 111 *et seq.*).

The most important general work on military criminal law is the *Traité théorique et pratique de droit pénal et procédure criminelle militaires*[89] by Augier and Le Poittevin. The first volume, dealing with substantive law, appeared in 1918. A much older and less valuable work, *Commentaire théorique et pratique des Codes de justice maritime et militaire*,[90] was published by Wilhelm in 1897. The latter consists of a reprint from the *Répertoire général du droit français*. Some idea of French courts-martial may be obtained from an article by Ferrari, of the New York bar, published in the Journal of the American Institute of Criminal Law in 1919 (v. 9, p. 5).

EXTRADITION

While extradition is not always dealt with in connection with criminal law and procedure, it is convenient to discuss the French law relating to the subject at this point.

Prior to 1927 extradition in France was regulated solely by treaty or declarations of reciprocity. It was also accorded by decree, the provisions of treaties not being considered exhaustive. The subject is now regulated by an important act of March 10, 1927.

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[89] Augier, J., et Le Poittevin, G. Traité théorique et pratique de droit pénal et de procédure criminelle militaires. t. 1, Droit pénal militaire. Paris, Recueil Sirey, 1918.

[90] Wilhelm, A. Commentaire théorique et pratique des Codes de justice maritime et militaire. Paris, Larose, 1897. 155 p.

This act is not applicable to matters regulated by treaties, but as the latter generally make no provision for the procedure to be followed in extradition proceedings the innovations of the present law have an important effect. Under its provisions, extradition can not take place in the absence of a favorable finding on the part of an accusatory court, thus introducing judicial process as one of the important elements in such proceedings. It should be remarked, however, that even though the finding of the court be favorable to extradition, the Government may refuse to honor the requisition of a foreign government.

With respect to the conditions under which extradition may be granted, the provisions of the new law follow generally the principles of international law as understood in France. Among the more important provisions of the act are those declaring that extradition can not take place if the accused is a French subject (at the time of the offense) or if the crime was committed in France or one of her possessions. In addition, the requisition will not be honored in the case of political or military crimes.

Extradition received treatment in Travers' *Le droit pénal international* (v. 4–5), which has already been referred to in connection with the discussion of jurisdiction. Reference is also sometimes made to Beauchet's earlier *Traité de l'extradition* [91] and different works on international law, but none of these works deal with the present law. A very good summary of the present act may be found in the manual of Professors Vidal and Magnol. In addition, it received commentary in a recent publication by Dr. Travers.[92]

PRIVATE INTERNATIONAL LAW

In French legal terminology the subject, private international law, has a wider scope than its American counterpart, conflict of laws. In addition to conflict of laws, properly speaking, it includes the rules of law concerning nationality and privileges of foreigners in France.

[91] Beauchet, L. Traité de l'extradition. (Extr. des Pandectes françaises.) Paris, Chevalier-Marescq, 1899. 752 p.

[92] Travers, M. L'entr'aide répressive internationale et la loi française du 10 mars 1927. Paris, Sirey, 1928. 772 p.

With the exception of those relating to nationality, which are the subject of minute regulation in practically all countries, positive rules are particularly few and are to be found in different parts of the Civil code, the Code of procedure, and the Commercial code. The sparsity and diversity of positive rules have led to greater development of this important subject through jurisprudence and doctrine than probably of any other field of French private law.

Indeed, the development of the subject in France has evoked the admiration of as eminent an American authority as Professor Lorenzen, who in an article on *French rules of conflicts of laws* (36 Yale Law Journal 731) says that "some of the greatest names connected with its science are French."

The standard current treatises are those of Professor Weiss and of the late Professor Pillet, both of Paris. The two treatises reflect to a certain extent the personal views of their authors and for that reason are to be used with some degree of care in so far as exposition of modern French law is concerned. The *Traité théorique et pratique*[93] of Professor Weiss was originally intended to consist of seven volumes, of which six were published between 1907 and 1913. An older work than that of Professor Pillet, it is perhaps better known and for that reason enjoys a greater degree of popularity. The *Traité pratique*[94] by Professor Pillet consists of two volumes published in 1923–24. The subject matter covered includes, in addition to the usual topics, such as nationality, domicil, jurisdiction, capacity, property, procedure, and execution of foreign judgments, a valuable discussion of international commercial law. The treatise itself was written largely from the point of view of a practical work intended to develop the principles contained in an older theoretical work by the same writer, *Principes de droit international privé*,[95] which, in addition to being a capital

[93] Weiss, A. Traité théorique et pratique de droit international privé. 2. éd. Paris, Recueil Sirey, 1907–13. 6 v.

[94] Pillet, A. Traité pratique de droit international privé. Paris, Recueil Sirey, 1923–24. 2 v.

[95] Pillet, A. Principes de droit international privé. Paris, Pedone, 1903. 586 p.

production, exercised considerable influence on French thought in the field of private international law. Reference should also be made here to a recent two-volume collection of essays and notes by Professor Pillet, published by Sirey under the title, *Mélanges Antoine Pillet.*

Reference is also sometimes made to a much older work, that of Laurent, a Belgian, *Droit civil international,*[96] which is no longer of practical value. Another old work, at one time important, but now not often consulted, is the *Traité du droit international privé,*[97] which was originally published by Foelix and later revised by Demangeat.

The number of one-volume works is exceedingly large. The more popular are those of Professors Weiss and Pillet and Niboyet. The *Manuel de droit international privé,*[98] by Professor Weiss, has gone through nine editions, and its popularity is in part due to its remarkable clarity of style. It is not always considered to be the equal in intrinsic merit of the recent *Manuel de droit international privé,*[99] by Professors Pillet and Niboyet. The older *Précis de droit international privé,*[1] by Professor Despagnet, a fifth edition of which was published in 1909 under the direction of Professor de Boeck, and the *Cours élémentaire de droit international privé*[2] of Professors Surville and Arthuys, a seventh edition of which appeared in 1925, are also important works. The latter in particular is informative and comprehensive. It should be remarked, however, that neither work fully expresses modern thought in the solution of prob-

[96] Laurent, F. Droit civil international. Bruxelles, Bruylant; 1880–81. 8 v.

[97] Foelix, J. Traité du droit international privé, ou, Du conflit des lois de différentes nations en matière de droit privé. 4. éd. rev. par Demangeat. Paris, Marescq, 1866. 2 v.

[98] Weiss, A. Manuel de droit international privé. 9. éd. Paris, Recueil Sirey, 1925. 737 p.

[99] Pillet, A., et Niboyet, J. Manuel de droit international privé. Paris, Recueil Sirey, 1924. 792 p. 2. ed. Niboyet, J. P. Manuel de droit international privé. 1928. 1.045 p.

[1] Despagnet, F. Précis de droit international privé. 5. éd. rev. par Ch. de Boeck. Paris, Larose & Tenin, 1909. 1,250 p.

[2] Surville, F., et Arthuys, F. Cours élémentaire de droit international privé. Droit civil. Procédure. Droit commercial. 7. éd. Paris, Rosseau, 1925. 948 p.

lems of private international law. The *Manuel*,[3] by Professor Valery is very good and represents in a realistic manner French jurisprudence, but for some reason it failed to obtain the same degree of popularity as the works which have already been mentioned. The recent *Précis de droit international privé*,[4] by Professor and Judge Arminjon, is generally considered to be very good, but somewhat difficult to read. The older short work of Audinet, *Principes élémentaires*,[5] while of value, is not considered to be as important as those of more recent date.

There are two important periodicals devoted to private international law, which in addition to leading articles contain the important court decisions. The oldest is the *Journal du droit international privé*, now called *Journal du droit international*. It was founded in 1874 by Clunet and is usually cited under the name of its founder. Its analytical indices are important. The well-known *Revue de droit international privé*, formerly the *Revue de droit international privé et de droit pénal international*, was founded by Darras in 1905 and since 1909 has been under the direction of Professor de Lapradelle, of the University of Paris. The latter review is often cited under the name Darras, but at present more usually under the name de Lapradelle.

Attention should also be called to an encyclopedia of private international law[6] which was begun by Professor de Lapradelle in 1914. Eight volumes have appeared to date; a ninth is announced as in press.

In addition reference should be made to a series of lectures on international unification of the rules of private international law, delivered by Professor Demogue in Buenos Aires in 1927.[7]

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[3] Valery, J. Manuel de droit international privé. Paris, Fontemoing, 1914. 1,391 p.

[4] Arminjon, P. Précis droit international privé. 2. éd. Paris, Dalloz, 1927–29. 2 v.

[5] Audinet, E. Principes élémentaires de droit international privé. 2. éd. Paris, Pedone, 1906. 692 p.

[6] Répertoire de droit international privé et de droit pénal international, pub. par. A. de Lapradelle. Paris, Recueil Sirey, 1914–30. 8 v. Present collaborator, J. P. Niboyet.

[7] Demogue, R. L'unification internationale du droit international privé. Paris, Rosseau, 1927. 205 p.

The article of Professor Lorenzen (36 Yale Law Journal 731), just referred to, is intended to be a part of a series of articles dealing with the treatment of conflict of laws problems in France; when completed, it should be an extremely valuable exposition of French law.

Nationality

Under the impression that the enjoyment of civil rights by nationals is the most important incident of nationality, the authors of the Civil code placed the rules relating to French nationality in the Code (arts. 8 *et seq.*). The original provisions have been amended or changed from time to time, notably in 1889, and were recently the subject of important legislation which brought about profound changes in the prior attitude of the legislature. This legislation (act of August 10, 1927) is believed to be of sufficient importance to warrant some comment.

Reform of the laws of nationality had been considered for a number of years. A project was proposed as early as 1913, but it was during the war that the first active steps were taken. Inspired by the spirit of hostility to foreigners engendered by the war, two projects were proposed in 1916 and 1917, the second being the result of the labors of the *Société d'études législatifs* (*Bulletin* 1917–18, pp. 23–82, 283–291.) These were adopted by the Senate in 1922 and ratified by the Chamber, but with sufficient modifications to require that the bill be sent back to the Senate. In the interval a number of other bills were voted on but without definite results.

In 1924 a new bill was adopted by the Senate. Accepted by the Chamber in 1927, it thus became a part of French law. The present law, instead of being less liberal than that previously in force, is marked by a spirit of liberality in enlarging the privilege of acquiring French nationality through birth and naturalization.

As already stated, the French rules of nationality were originally placed in the Civil code. The present law is intended to group them under a separate heading independent of the Code and repeals the diverse articles and the act of 1889 as well as all prior laws in conflict with the new act.

The act itself is set forth in full in the 1928 Dalloz pocket edition of the Civil code (*Petit Dalloz.*)[8]

The principal changes include retention of French nationality by the French wife on marriage to an alien, extension of the circumstances under which French nationality can be acquired through birth on French soil, facility of naturalization, and permanent organization of the machinery for forfeiture of nationality by naturalized citizens not worthy of citizenship.

Prior to 1889 a French woman lost her nationality on marriage to an alien. Under the act of that year she lost her nationality only if the law of her husband's state permitted her to acquire his nationality. The present law permits her to retain French nationality or, perhaps more accurately, provides (art. 8) for the retention of French citizenship in the absence of a declaration to the contrary, on marriage.

Closely connected with conservation of citizenship, on marriage, is the provision of article 1 of the new law which confers irrevocable citizenship on a child born on French soil of a French mother. A child born on French soil of a mother also born in France but not French at the time of the birth of the child may repudiate French citizenship (art. 2).

Naturalization

The Civil code as originally adopted made no provision for naturalization. The matter was successively regulated by a decree of 1809, another of 1848, and a law of 1849. This latter law was replaced by an act of June 29, 1867, which, as incorporated in the Civil code (art. 8) in 1889, constituted the fundamental legislation until 1927. The legislation of 1927 is marked by an unusual degree of liberality. The length of residence required is three years, and in a number of instances a residence of one year is sufficient. In addition, the provisions of article 13 of the Code with respect to domicil in France were repealed so that the usual period of residence required is 3 years instead of 3 or 10 years, depending on admission to French domicil.

Professor Niboyet, of the Strasbourg Faculty, in a recent commentary on the new law, gives an interesting account

[8] Dalloz. Code civil. Paris, Dalloz, 1928. 933 p. The act appears at p. 23. *See also* Journal officiel, August 10, 1927.

of the reasons for its liberality. During the war the general tendency in France was one of restriction upon the acquisition of French nationality, it being thought that the existing laws rendered its acquisition too easy. The change in attitude was largely the result of the enormous increase in foreign population after the war. The policy of the new legislation is one of assimilation of this population.

The new law has been the subject of a number of commentaries. That of Professor Niboyet, which has already been referred to, was recently published as a Supplement to the *Manuel de droit international privé*[9] by Professors Niboyet and Pillet. Professor Valery is the author of another, published under the title, *La nationalité française.*[10] Mention should also be made of other commentaries by Audinet[11] and Louis-Lucas.[11a] In addition, naturalization under the act of 1927 is dealt with in a manual for foreigners in France, by J. Lidji and A. Le Moal.[12]

Rights and Privileges of Foreigners

The original Civil code, as compared with the liberality of the Revolution, was marked by a spirit of hostility toward foreigners. But such provisions as articles 726 and 912, dealing with limitations on the privilege of foreigners to inherit and to receive gifts *inter vivos*, were repealed by a law of July 14, 1819, which accorded full capacity in these respects, with an important qualification as to succession by foreigners whose national laws do not permit French citizens to inherit (*droit de prélèvement*).

Other privileges have been accorded foreigners through express legislative enactments. Protection of patents, designs, trade-marks and literary and artistic property has

[9] Niboyet, J. P. Supplément au Manuel de droit international privé de Pillet et Niboyet. Commentaire de la loi sur la nationalité du 10 août 1927. Paris, Recueil Sirey, 1928. 167 p.

[10] Valéry, J. La nationalité française (Commentaire de la loi du 10 août 1927). Paris, Librairie générale de droit et de jurisprudence, 1927. 88 p.

[11] Audinet, E. La nationalité française. Étude critique de la loi du 10 août 1927. Paris, Sirey, 1928. 47 p.

[11a] Louis-Lucas. La nationalité française. Paris, Recueil Sirey, 1929. 2 p. l., 343, [1] p.

[12] Lidji, J., et Le Moal, A. Manuel de l'étranger en France. La naturalisation selon la loi du 10 août 1927. Paris, Sirey, 1928. 174 p.

been extended by special legislation (*see* Literary and industrial property, *supra*). Likewise, foreign workers injured in France enjoy the privileges of the Workmen's compensation act of 1898 as long as they remain in France. Some discussion of these legislative provisions may be found in the various general treatises and manuals. In this connection it should also be noted that certain callings are prohibited to foreigners (*See* Pillet and Niboyet, *Manuel*, p. 265 *et seq.*) They may not practice law as advocates, direct (*gérer*) the publication of a newspaper, take part in the administration of a trade-union or direct the management of a private educational institution. Likewise, fishing in French coastal waters is reserved to French citizens. There are also regulations concerning the practice of pharmacy, based on reciprocity, and a French diploma is required in order to practice medicine. In addition, French law requires that three-fourths of the crew of a French merchant vessel be French and that one-half of its owners be French.

With respect to civil rights and privileges in general, the important positive provision is article 11 of the Civil code, which provides for the extension of the same civil rights and privileges to foreigners in France as are accorded in their respective countries to French citizens by treaty. This article has been the subject of an extensive literature, particularly with respect to the interpretation of the term civil rights and privileges (*droits civils*). According to Professors Pillet and Niboyet (*Manuel*, p. 76 *et seq.*) article 11 has received three distinct doctrinal interpretations.

Professor Demolombe in his *Traité de la publication, des effets et de l'application des lois*[13] (v. 1, p. 362 *et seq.*) takes the position that the term *droits civils* is the equivalent of private civil rights and that in the absence of treaty the foreigner in France does not enjoy any private rights, with certain exceptions. This view has now been universally rejected.

[13] Demolombe, C. Cours de Code Napoléon. Vol. I. Traité de la publication, des effets et de l'application des lois en général. 6. éd. Paris, Lahure, 1880. *See* Civil law for a discussion of Demolombe's work on the Civil code.

In their general treatise on civil law (5th ed., v. 1, p. 497), Aubry and Rau take the position that article 11 was intended to apply only to such rights or privileges as are generally denied foreigners under the principles of international law as accepted generally by civilized nations, foreigners being permitted to enjoy other privileges, even in the absence of treaty. This view is often represented as that taken by French courts.

The third view is referred to as that of Demangeat and Valette (cf. Demangeat, *Histoire de la condition civile des étrangers en France*[14] and Valette, *Explication sommaire*[15]) and is actually advocated by Professors Surville and Arthuys and Despagnet in their manuals on private international law. Under this view the term *droits civils* in article 11 only applies to such rights or privileges as are expressly denied foreigners.

According to Professors Pillet and Niboyet, French jurisprudence first followed closely the theory of Demolombe, then adopted that of Aubry and Rau and now seems to be leaning towards the views of Demangeat and Valette.

Mention should be made of the fact that discussions of the problems arising out of the application of article 11 appear in the treatises on civil law as well as in those on private international law. An extensive discussion may be found in Aubry and Rau (v. 1, p. 471, *et seq.*). There is also a recent text devoted to civil capacity of foreigners in France, by Batifol.[15a]

Before leaving the subject of privileges of foreigners in France, attention should again be called to Professor Pillet's work on juristic persons in private international law,[16] already referred to in connection with associations doing business in France. This work, it will be recalled, contains

[14] Demangeat, C. Histoire de la condition civile des étrangers en France dans l'ancien et dans le nouveau droit. Paris, Joubert, 1844. 424 p.

[15] Valette, A. Explication sommaire du livre premier du Code Napoléon et des lois accessoires. Paris, Marescq, 1859. x, 448 p.

[15a] Batifol, H. La capacité civile des étrangers en France. Paris, Recueil Sirey, 1929. 322 p.

[16] Pillet, A. Des personnes morales en droit international privé. Paris, Recueil Sirey, 1914. 434 p.

a valuable discussion of the privileges of foreign corporations in France.

Mention might also be made here of a recent short work by M. Lachaze [17] dealing with aliens under French public law.

Conflict of Laws

Conflict of laws in the narrower sense concerns the problem of determining the proper rule of internal law (French or foreign) to be applied to a fact situation by a French court when some or all of the operative facts are non-French. The French approach to the problem is different from that ordinarily employed by a common-law court. This difference can, perhaps, be best pointed out by reference to concrete cases.

French and New York rules with respect to both formal and substantive validity of a marriage are different. New Yorkers marry in France or French citizens marry in New York. Having determined that foreigners enjoy the privilege of marrying in France, a French court would apply New York law with respect to the capacity of New Yorkers to marry in France. Likewise, because of a provision in article 3 of the Civil code, the capacity of French citizens to marry in New York would be determined by French law. In both cases New York and French law would be given extraterritorial effect as the national law of the parties. There are several different theories as to the circumstances under which law should be given extraterritorial effect. Some reference to these theories may be of value.

During the pre-code period when customary law varied from province to province, not only in France but on the entire continent, the interprovincial conflicts of laws gave rise to three schools of thought usually designated as the Italian, French, and Dutch schools, all of which received extensive discussion in Professor Lainé's important and classical work, *Introduction au droit international privé.*[18] The French school, represented in the sixteenth century by D'Argentré and DuMoulin and in the eighteenth by Froland,

[17] Lachaze, M. Les étrangers dans le droit public français. Paris, Dalloz, 1928. 260 p.

[18] Lainé, A. Introduction au droit international privé. Paris, Pichon, 1888–92. 2 v.

Boullenois, and Bouhier, with varying degrees, may be said to have had as its underlying theory "reality" of law tempered by "personality." Customary laws were divided into real and personal, the former being those pertaining to things and the latter those pertaining to persons, and, of course, attaching to the person wherever he might be. The theory was that presumptively laws are real, personal laws being the exception, but those laws which are personal are enforceable extraterritorially, not through comity but because justice requires it. It is interesting to note that the Louisiana Supreme Court in Saul *v.* His Creditors (5 Mart. n. s., 569, 1827) had recourse to the various theories of French and Dutch jurists in deciding a question involving marital property rights and conflict of laws.

More recently, since codification, there have been three theories of territoriality or extraterritoriality of law, advocated by French writers. The territorial theory, having its origin in the Dutch school and assumed to be the Anglo-American theory, has had but few supporters in France. While foreign to French positive law and jurisprudence, it had, however, the support of Foelix and more recently of Professor de Vareilles-Sommières (cf. *Synthèse du droit international*,[19] v. 1, nos. 117–156). The modern Italian theory looks on law as personal, since laws are made for persons, and consequently regards extraterritoriality as the rule and territoriality as the exception. This theory is usually credited to the statesman Mancini, and numbers among its French adherents the eminent Professor Weiss, whose treatise and manual have already been referred to.

The third view is that of Professor Pillet. Rejecting the extremes of both the territorial and personal theories as well as the bipartite division of the pre-code French school into real and personal laws, Professor Pillet, like Savigny, divides laws into two categories, those which, in their nature, are extraterritorial and those which are territorial. He, however, goes a step further in basing this division on the social purposes of laws. He would seem to base extraterritoriality and territoriality on a consideration of the person

[19] La Broüe de Vareilles-Sommières, G. La synthèse du droit international privé. Paris, Pichon, 1897. 2 v.

or persons to be benefited by a law. If it has as its purpose the benefit of an individual, it is general in its scope and applies extraterritorially. If it is intended to benefit the national or collective group, it is territorial. In connection with the different doctrinal theories which have been advanced or followed by French writers, attention should be called to a thesis, *L'évolution de la jurisprudence*, by Professor Donnedieu de Vabres,[20] in which the author gives an exposition of the various views adopted at different times by French courts with respect to problems of conflict of laws. A very good short discussion of the different theories may be found in the manual of Professors Pillet and Niboyet (p. 336 *et seq.*).

Theory of Qualifications

While two different jurisdictions may make use of the same concepts when dealing with problems of conflicts of laws, the content given them may differ. Thus, nationality, domicil, form, capacity, procedure, etc., may be important terms to be used in reaching results, but their meaning may differ. So, it is often important to determine what law should govern in defining their content. This problem, which was discussed by Professor Lorenzen in the Columbia Law Review for 1920, under the title *The theory of qualifications* (20 Columbia Law Review 247), was first developed in 1899, in such a manner as to attract attention, by Professor Bartin, now of the Paris Law school (Clunet, 1897, pp. 225–255, 466–495, 720–728). These valuable articles were later republished in an important work, *Études de droit international privé*.[21] Professor Bartin would ordinarily apply the law of the forum in determining the nature of a given legal institution, but would admit two exceptions, namely, in determining the nature of property as movable or immovable and in determining the place where a contract has been "made." The theory developed by Professor Bartin is described by Professor Lorenzen in the article just referred to, which con-

[20] Donnedieu de Vabres, H. L'évolution de la jurisprudence française en matière de conflit des lois. Paris, Rousseau, 1905. 644 p.

[21] Bartin, E. Études de droit international privé. Paris, Chevalier-Marescq, 1899. 284 p.

tains some reference to the theories of other writers. Judge Arminjon's *Les qualifications légales* [22] is also important. Renvoi

The second part of Professor Bartin's studies is devoted to a discussion of the *renvoi* doctrine arising out of the difficulties encountered in determining whether, once it is found that a foreign rule of law is competent, the foreign internal rule or the conflict of laws rule should be applied. If an American testator dies domiciled in France, in so far as movables are concerned, a French court would apply his national law in determining testate capacity, while an American court would apply the law of his domicil at the time of his death. Immediately the question arises as to whether a French court should refer the matter to the internal or conflict of laws rule of his nationality, which here would be those of his state in the United States. If reference is made to the latter the matter would be referred back to the law of France (the domicil) for settlement. Reference back or *renvoi* was first adopted in France in the famous Forgo case and since then has definitely become a part of French law. Space does not admit of any discussion of the vast literature relating to the doctrine. In addition to the excellent discussion by Professor Bartin just mentioned and those to be found in the various French texts and manuals, an extensive and scholarly treatment of the problem, along with a valuable bibliography and exposition of court decisions, may be found in a thesis, *La question du renvoi*,[23] published by Potu in 1913. A valuable series of articles by Professor Lainé appeared in the *Revue de Lapradelle* between 1906 and 1909.[24] The problem has also been discussed by a number of American and English writers, such as Professors

[22] Arminjon, P. Les qualifications légales en droit international privé. Paris, Recueil Sirey; Bruxelles, Weissenbruck, 1923. 18 p. (*Extr.* de la Revue de droit international et de législation comparée, 1923, p. 272.)

[23] Potu, E. La question du renvoi en droit international privé. Paris, Juris-classeurs, 1913. 361 p.

[24] Lainé, A. La théorie du renvoi en droit international privé. 1906, p. 605; 1907, pp. 43, 313, 661; 1908, p. 729; 1909, p. 12. (*Extr.* Revue de droit international privé.)

Schreiber and Lorenzen and Bate and Dicey.[25] In addition, the various theories were dealt with in *In re* Tallmadge (181 N. Y. Supp. 336), in which the Surrogate's Court of New York County came to the conclusion that the *renvoi* doctrine is not a part of New York law.

The best discussions of problems of conflict of laws in particular fields such as contracts, property, and succession are to be found in the general treatises and manuals. A good special study on respect for acquired rights as to movable property was published in 1912 as a thesis by Niboyet, later professor at Strasbourg.[26] With respect to immovables, Devin's *La propriété immobilière des étrangers en France*[27] is important.

Suits by and against foreigners

Attention should be called to the provisions of articles 14 to 16 of the Civil code concerning suits by and against foreigners in France. Article 14, providing for jurisdiction of suits brought by French citizens against foreigners, even when not residing in France, is dealt with by Professor Bartin in his *Effets internationaux des jugements*[28] and again in the twelfth volume of the fifth edition of Aubry and Rau (no. 748). Professor Bartin's name has already been mentioned in connection with his studies on the theory of qualifications and the *renvoi* doctrine. Due to his standing in the field of private international law his part in the revision of the fifth edition of the classical work of Aubry and Rau is particularly valuable in so far as problems in this field are concerned. The same volume contains a discussion of article

[25] Lorenzen, E. G. The renvoi doctrine in conflict of laws. 27 Yale Law Journal 508; The renvoi theory and the application of foreign law. 10 Columbia Law Review, 190, 327. Both articles give extensive bibliographies. Schreiber, Doctrine of the renvoi in Anglo-American law. 31 Harvard Law Review 523. Also 29 Yale Law Journal 214, 244. Bate, Th. Notes on the doctrine of renvoi in private international law (1904). Dicey, Conflict of laws, 3d ed. (1922), p. 771 *et seq.*

[26] Niboyet, J. Des conflits de lois relatifs à l'acquisition de la propriété et des droits sur les meubles corporels à titre particulier: étude de droit international privé. Paris, Larose et Tenin, 1912. 575 p.

[27] Devin, J. La propriété immobilière des étrangers en France. Paris, Roustan, 1926. 234 p.

[28] Bartin, E. Études sur les effets internationaux des jugements. Paris, Pichon et Durand-Auzias, 1907. v. 1. De la compétence du tribunal étranger.

15, providing for suit in France against a Frenchman on obligations contracted abroad (no. 748), and of article 16 providing for bond to be given by foreign plaintiffs suing in France (no. 747). The important question of lack of jurisdiction to settle controversies between foreigners, with its numerous exceptions, is also dealt with in the same work (no. 748, pp. 47–62). Attention should be called to the fact that the entire subject is dealt with specially in volumes 5 and 6 of Professor Weiss's treatise. Reference should also be made to Professor Pillet's *Jurisdiction in actions between foreigners*, in 18 Harvard Law Review 325, and to Professor Beale's *Jurisdiction of courts over foreigners*, in 26 Harvard Law Review 193. Mention might be made of two older French works, Bonfils' *De la compétence des tribunaux* [30] and a similar work by Lachau.[31] International conventions concerning jurisdiction and execution of judgments are contained in a collection published by Professor Pillet in 1913.[32]

Foreign Judgments

The only positive provisions of French law relative to the execution and enforcement of foreign judgments in France are those contained in articles 546 of the Code of procedure and 2123 of the Civil code, with the result that the insufficiency of legislative texts has left the matter largely in the hands of the courts. In addition to the treatment to be found in texts on conflict of laws and Professor Bartin's work on the international effects of judgments, just mentioned, an extensive discussion appears in Aubry and Rau (v. 12, pp. 475–519). Execution of foreign judgments was also dealt with in *De l'exécution des jugements étrangers* [33] by Lachau and Daguin.

[30] Bonfils, H. De la compétence des tribunaux français à l'égard des étrangers en matière civile, commerciale et criminelle. Paris, Durand, 1865. 392 p.

[31] Lachau, C. De la compétence des tribunaux français à l'égard des étrangers en matière civile et commerciale. Paris, Larose et Forcel, 1893. 468 p.

[32] Pillet, A. Les conventions internationales relatives à la compétence judiciaire et à l'exécution des jugements. Paris, Larose et Tenin, 1913. 401 p.

[33] Lachau, C., and Daguin, C. De l'exécution des jugements étrangers d'après la jurisprudence française. Paris, Larose et Forcel, 1889. 240 p.

PUBLIC LAW

If internal public law is defined so as to comprise all the rules regulating the relations between a state and its citizens or subjects, then criminal law and procedure and civil procedure, at least that portion pertaining to courts, their jurisdiction and organization, should be included. But it has been found to be more convenient to discuss these topics separately. This leaves for discussion under the present heading constitutional law, administrative law, and public finance and taxation. Before turning to these separate topics it might be worth while to call attention to several short texts which give a general notion of French government and public law.

The principal elementary student works on public law are those of Professors Renard,[34] Moye,[35] Nézard,[36] and Bonnard.[37] The *Cours élémentaire de droit public*, by Professor Renard of the Nancy Law School seems to be the best. An even more elementary but comprehensive work on French government is Professor Barthélemy's *Le gouvernement de la France*,[38] an English translation of which was published by J. Bayard Morris, of Oxford, under the title *The government of France*.[39] Another elementary work on French government which is worth consulting is the English translation by Raymond Poincaré's *How France is governed*,[40] originally published for the use of non-university students.

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[34] Renard, G. Cours élémentaire de droit public; droit constitutionnel, droit administratif, droit financier. Paris, Recueil Sirey, 1922. 361 p.

[35] Moye, M. Précis élémentaire de droit public français. 2. éd. Paris, Recueil Sirey, 1920. 289 p.

[36] Nézard, J. Élements de droit public. 2. éd. Paris, Rousseau, 1922. 403 p.

[37] Bonnard, R. Précis élémentaire de droit public. Paris, Recueil Sirey, 1925. 376 p.

[38] Barthélemy, J. Le gouvernement de la France; tableau des institutions politiques, administratives et judiciaires de la France contemporaine. Nouv. éd. Paris, Payot, 1925. 244 p.

[39] Barthélemy, J. The government of France. Translation by J. Bayard Morris. London, G. Allen & Unwin, [1924]. 222 p.

[40] Poincaré, R. How France is governed. Tr. by Bernard Miall. New York, R. M. McBride & company, 1919. 336 p.

A more scholarly and valuable work on public law in general is Professor Hauriou's *Principes de droit public.*[41] The general theory of the state, constitutional law, and administrative law are also dealt with in a recent work by X. Combothecra.[42] In addition, attention should be called to a collection of essays on topics of public law, by a number of French and foreign writers, in commemoration of the late Professor Hauriou.[42a]

From a conception of sovereignty and of the state which can be expressed in the maxim, "I am the State," or even from the conception as developed in Rousseau's *Du contrat social*, to modern conceptions of limited sovereignty, the functional state, and state responsibility for injuries committed by officers, is a long step. The French Revolution brought about fundamental changes in the overthrow of the old régime, and while there has from time to time been temporary reaction, the evolution in governmental and political theories in France has witnessed a gradual but steady march to a new order in political philosophy. A number of writers give to sovereignty a changed content. According to some it is no longer a workable concept. A new doctrine of state responsibility has been evolved, and with it administrative law has been developed to a point not yet attained in English and American jurisdictions. Much of the literature produced in France in the last few years is of particular value, not only because it gives an exposition of French public law, but because it contains so much that represents an antithesis to classical theories. To some, perhaps, it embodies ultra modern thought in the problems of the State. Professor Duguit, dean of the Law School of the University of Bordeaux, in a small work entitled *Les transformations du droit public*,[43] gives an account of the changes which have been taking place. While by no means acceptable to all, his ideas on the change from the imperialistic conception of

[41] Hauriou, M. Principes de droit public. 2. éd. Paris. Recueil Sirey, 1916. 828 p.

[42] Combothecra, X. Manuel de droit public général du monde civilisé. Paris, Sirey, 1928. 365 p.

[42a] Mélanges Maurice Hauriou. Paris, Sirey, 1929. 832 p.

[43] Duguit, L. Les transformations du droit public. Paris, Colin, 1913. 285 p. Reprint 1921.

sovereignty to public service as the function of the State, the development of administrative law and state responsibility, are well worth considering as a background to a study of French public law. To these subjects we shall recur.

Before passing on to constitutional law, attention should be called to a comprehensive collection of political and administrative laws, *Code des lois politiques et administratives*,[44] which was published in parts between 1887 and 1905. Mention should also be made here of the principal periodicals devoted to public law in general. Of these the most important is the *Revue du droit public et de la science politique*, now under the direction of Professor Jèze. Other reviews are the *Revue des sciences politiques* and *Revue politique et parlementaire*. In addition, useful articles appear from time to time in the periodicals discussed in connection with civil law.

CONSTITUTIONAL LAW

The history of constitution making in France begins with the Constitution of September 3, 1791, adopted by the Constituent Assembly as the first written constitution, and ends with the constitutional laws of 1875, which, as revised, constitute the cornerstone of the present political scheme. In the introduction to his work on French government, just referred to, Professor Barthélemy calls attention to the fact that nearly all the subsequent governments have left their impression on the administrative foundation built by Napoleon, with the result that French institutions do not present "the appearence of a fine, foursquare building, whose parts are all harmoniously arranged according to a preconceived plan." There has been, however, when one considers the numerous political changes of the last century, a remarkable continuity and adaptation of the older foundation to new needs.

The present constitutional organization was not provided for in one document but in five separate laws enacted by the National Assembly during the course of 1875. Of

[44] Dalloz. Les codes annotés d'après la doctrine et la jurisprudence: Code des lois politiques et administratives. Paris, Dalloz, 1887–1905. 6 v.

these five laws only three received constitutional form. The other two, concerning the election of senators and deputies, were subjected to the same conditions as ordinary legislation. It is an interesting fact that, while the Third Republic has been longer lived than any other government since the Revolution and now seems destined to be the permanent form of government, the assembly which created it was largely anti-republican and monarchist. At the same time all republicans of every shade were willing to lay aside their particular beliefs in order to establish a republican form of government as a fact, with the result that the Constitution of 1875 represents a compromise between conflicting traditions of monarchy and republic which was, when adopted, considered to be temporary; by monarchists, as an expedient to await the proper moment for a return to monarchy; by republicans, as a makeshift until the Republic could be placed on a firm foundation. The most important revision since 1875 was that of 1884.

The texts of the various constitutions and political laws since 1789 are contained in *Les constitutions de la France* [45] originally published by Professors Duguit and Monnier. A fourth edition was recently published by Professor Duguit, now dean of the law school of the University of Bordeaux. In addition to the texts, this work contains a section giving the historical background of each of the constitutions.

The two great classics on French constitutional law are Professor Esmein's *Éléments de droit constitutionnel* [46] and Professor Duguit's *Traité de droit constitutionnel.*[47] Both works are devoted in large part to theory and represent extremely interesting and opposing points of view. The former, originally the work of Professor Esmein of the Paris Law School and recently revised by Professor Nézard of the law school of the University of Caen, follows in the main

[45] Duguit, L., et Monnier, H. Les constitutions et les principales lois politiques de la France depuis 1789. 4. éd. Paris, Librairie générale de droit et de jurisprudence, 1925. 385, 61 p.

[46] Esmein, A. Éléments de droit constitutionnel français et comparé. 8. éd. rev. par. H. Nézard. Paris, Recueil Sirey, 1927–28. 2 v.

[47] Duguit. Traité de droit constitutionnel. 2. éd. Paris, de Boccard, 1921–25. 5 v.

classical thought. Consisting of two volumes, the first is devoted to a comparative study of the underlying theories of the political institutions and laws of western Europe; they are found to be derived from two sources, the English constitution and the French Revolution, along with the movement of ideas which preceded the latter. With these two sources as a background, but with copious references to the institutions and theories of other countries, this volume is taken up with a discussion of representative government, the bicameral legislative system, parliamentary government, national sovereignty, separation of powers and individual liberties. The second volume is devoted to the French constitutional system. Basing their theories of the state on sovereignty and personality as fundamental, Professors Esmein and Nézard reject the theories of Professor Duguit as contrary to the outstanding principles on which the public law of France and a large part of the civilized world have been based since the American and French Revolutions.

The treatise by Professor Duguit, dean of the law school of the University of Bordeaux, consists of five volumes, of which the first two are devoted to general theory, the third mainly to State responsibility, and the last two to French political organization and political liberties. The general survey contained in the last two volumes is an excellent exposition of French institutions and liberties. The first three volumes deal with the various doctrines developed by Professor Duguit in his earlier works, all of which have been mentioned in connection with the chapter on legal philosophy.[48] In addition, the third volume gives an extremely valuable exposition of the principles of administrative law. It is in his rejection of the classical concept of sovereignty and the personality of the state that Professor Duguit deserves his reputation as an ultra-modernist. Probably no French writer on public law has been as influential with the younger generation, and certainly the theories of no modern French writer have been as much discussed, with both praise and condemnation. To one unacquainted with French political thought the

[48] *See* Legal philosophy. Pages 43–45. notes 96 *et seq.*

discussion in the first part of his work should be of particular value because of his searching criticism of accepted doctrines, with full bibliographic notes, his answers to his critics, and his exposition of his own ideas.

Another important work is the *Traité élémentaire*,[49] by Professors Joseph Barthélemy, of the Paris Law School, and Paul Duez, of the Law faculty of the University of Lille. This one volume text devotes but little space to theory, and gives in convenient form an excellent outline of the French constitutional organization. The *Précis de droit constitutionnel*,[50] by Professor Hauriou, dean of the law school of the University of Toulouse, is an important students' text.

There are several other texts designed primarily for the use of students. The *Manuel* [51] by Professor Duguit gives a summary of the material discussed in his treatise. Professor Hauriou is also the author of a later elementary work, *Précis élémentaire*.[52] Reference is sometimes made to the works of Professor de Lapradelle,[53] who has already been mentioned in connection with conflict of laws, and of Professor Moreau.[54] Neither work has, however, the reputation of the elementary treatises of Professors Duguit and Hauriou.

Logically, the different topics dealt with in works on constitutional law should be discussed at this point. In order to avoid repetition, it is believed to be more expedient to postpone their discussion until some reference has been made to the outstanding works on administrative law.

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[49] Barthélemy, J., et Duez, P. Traité élémentaire de droit constitutionnel. Paris, Dalloz, 1926. 713 p.

[50] Hauriou, M. Précis de droit constitutionnel. 2. éd. Paris, Recueil Sirey, 1929. 760 p.

[51] Duguit, L. Manuel de droit constitutionnel. 4. éd. Paris, de Boccard, 1923. 605 p.

[52] Hauriou, M. Précis élémentaire de droit constitutionnel. Paris, Recrueil Sirey, 1929. 332 p. La licence en droit; *see* Legal education, page 31, note 57.

[53] Lapradelle, A. G. de. Cours de droit constitutionnel. Paris, Pedone, 1912. 592 p.

[54] Moreau, F. Précis élémentaire de droit constitutionnel. 9. éd. Paris, Recueil Sirey, 1921. 595 p.

ADMINISTRATIVE LAW

Administrative law in France comprises, in the main, that branch of public law which regulates the organization of the administrative authorities, their powers, and their relations to each other and to private individuals. Separate and distinct from the civil law, it is administered by a separate body of tribunals which have jurisdiction over controversies between the administration and private individuals and over conflicts between administrative and other courts.

The general outlines of French administrative law are given in an article by Professor Garner, of the University of Illinois, in the Yale Law Journal for 1923–24 (v. 33, p. 597). This article seems to be the best general survey published in English. Professor Dicey of Oxford has also dealt with the subject. He was the author of an article, "*'Droit administratif' in modern French law*," published in the Law Quarterly Review in 1901 (v. 17, p. 302). He devoted a chapter of his *Law of the Constitution*[55] to French administrative law. Some discussion may be found in Professor Goodnow's *Comparative administrative law.*[56] Due to its age this work does not reflect the more modern developments.

The classical modern French works are those of Professors Hauriou, dean of the Law School of the University of Toulouse, and Berthélemy, dean of the Law School of the University of Paris.

Treatises

The *Précis de droit administratif*[57] by Professor Hauriou, now in an eleventh edition, has the reputation of being original and scholarly, but somewhat abstract and difficult to read. Professor Berthélemy's *Traité élémentaire*[58] is gen-

[55] Dicey, A. V. Introduction to the study of the law of the Constitution. 8th ed. 1915. Reprint 1924. London, Macmillan and company. 577 p.

[56] Goodnow, F. J. Comparative administrative law. Student's ed. New York and London, Putnam's sons, 1903. 2 v. in. 1.

[57] Hauriou, M. Précis de droit administratif et de droit public. 11. éd. Paris, Recueil Sirey, 1927. 1068 p.

[58] Berthélemy, H. Traité élémentaire de droit administratif. 11. éd. Paris, Rousseau, 1926. 1174 p. Supplément 1927. 148 p.

erally considered to be an excellent practical guide as well as a useful theoretical work. Both works take up administrative organization, public service, judicial control of administrative acts and state responsibility.

Another important treatise is that of Professor Jèze, *Les principes généraux du droit administratif*,[59] which, influenced by the earlier works of Professor Duguit, was first published in 1904 in pamphlet form, was revised and republished in a second edition in 1914, and in a third, in 1925–1930. These editions are devoted to a technical study of administrative law, of governmental agents and their acts, and of the theory of redress. Reference is also sometimes made to Professor Moreau's *Manuel de droit administratif*,[60] which, while less valuable than the works already mentioned, is also important. The *Traité élémentaire* [61] by Simonet, at one time a public official, was formerly very popular in administrative circles, but is now of less importance.

Mention might well be made of several books for students which, while informative, make no pretense of being other than elementary. The most important are the *Précis* by Professors Hauriou,[62] Rolland,[63] and Bonnard.[64]

Some reference should also be made to a number of classics which played an important part in the development of ad-

[59] Jèze, G. Les principes généraux du droit administratif:

—. t. 1. La technique juridique du droit public français. 3. éd. Paris, Giard, 1925. 482 p.

—. t. 2. La notion de service public.—Les individus du service public le statut des agents publics. 3. éd. Paris, Giard, 1930. 848 p.

—. t. 3. Le fonctionnement des services publics. 3. éd. Paris, Giard, 1926. 540 p.

[60] Moreau, F. Manuel de droit administratif. Paris, Fontemoing, 1909. 3 p. l., 640 p.

[61] Simonet, J. Traité élémentaire de droit public et administratif. 4. éd. Paris, Pichon, 1902. 965 p.

[62] Hauriou, M. Précis élémentaire de droit administratif. Paris, Recueil Sirey, 1925. La licence en droit; *see* Legal education. Page 31, note 57.

[63] Rolland, L. Droit administratif. One of the Petits précis Dalloz; *see* Legal education. Page 31, note 57.

[64] Bonnard, R. Précis élémentaire de droit administratif. Paris, Recueil Sirey, 1926. *See* La licence en droit. Page 31, note 58.

ministrative law and are still sometimes cited. The *Cours de droit administratif*[65] by Professor Ducrocq, of Paris, consists of seven volumes and, in addition to administration, deals with general principles of public law and finance. Professor Dufour's *Traité général*[66] consists of 12 volumes, including a 4-volume supplement published in 1901 by Taudière. The *Traité*[67] by Professor (and Senator) Batbie consists of nine volumes, the eighth being an encyclopedia of administrative law. Another work to which reference is sometimes made is Aucoc's *Conférences sur l'administration.*[68]

Encyclopedias

There are several encyclopedias devoted entirely to administrative law. The most important is the *Répertoire du droit administratif*[69] which was founded by Béquet in 1882 and published between 1883 and 1914 with the collaboration of a number of public officials. It is usually cited under the name of its founder. Reference is often made to the *Dictionnaire de l'administration,*[70] by Block, a fifth edition of which was published in 1905. A supplement was added in 1907. A similar work is that of Blanche,[71] a second edition

[65] Ducrocq, T. Cours de droit administratif et de législation française des finances, avec introduction de droit constitutionnel et les principes du droit public. 7. éd. Paris, Fontemoing; Rivière, 1897–1905. 7 v.

[66] Dufour, G. Traité général de droit administratif appliqué. 3. éd. avec supplément par Taudière. Paris, Marchal et Billard, 1870–1901. 12 v. including Supplement of 4 v.

[67] Batbie, A. Traité théorique et pratique de droit public et administratif. 2. éd. Paris, Larose et Forcel, 1885–94. 9 v. including Supplement by Boillot.

[68] Aucoc, L. Conférences sur l'administration et le droit administratif faites à l'École des ponts et chaussées: v. 1, Organisation et attributions des pouvoirs publics. 3. éd. Paris, Dunod, 1885. v. 2, Règles générales relatives à l'exécution des travaux publics. Service des ponts et chaussées. Finances publiques . . . 3. éd. Paris, Dunod, 1886. v. 3, Des routes nationales et départementales . . . 2. éd. Paris, Dunod, 1882.

[69] Béquet, Laferrière and Dislère. Répertoire du droit administratif. Paris, Dupont, 1882–1914. 28 v.

[70] Block, M. Dictionnaire de l'administration française. 5. éd. by E. Maguéro. Paris, Berger-Levrault, 1905. 2 v. Supplément. 1907. 112 p.

[71] Blanche, A. Dictionnaire général d'administration. Nouv. éd. par de Mouy. Paris, Dupont, 1904. 2 v.

of which was published in 1904. Both are considered to be somewhat old for practical purposes, but they are still usable. Good discussions of administrative matters are also to be found in the *Répertoires* of Dalloz and Fuzier-Herman.

Codes

Laws and decrees pertaining to administrative matters are collected in convenient form in the *Code administratif*[72] published by Dalloz and forming a part of the *Petite collection Dalloz* and in the *Code administratif*[73] compiled by Delpech and forming a part of the *Collection des Petits codes Carpentier.*

Attention should be called to the reports of administrative decisions, *Recueil des arrêts du Conseil d'État*, which were begun in 1821 and now appear monthly. The *Recueil* is sometimes cited under the name Panhard, but more usually under the name Lebon. Administrative decisions of the Council of State prior to 1839 were also collected in a 7-volume work by Roche and Lebon published between 1839 and 1846. It should be recalled that both Dalloz and Sirey devote a part of their *Recueils* to administrative decisions.

In connection with administrative decisions, an important contribution on administrative law will be found in a collection of notes by Professor Hauriou on decisions of the Council of State and Tribunal of Conflicts, contributed between 1892 and 1928 to the *Recueil Sirey.*[73a]

Administrative organization

The organization of the administrative hierarchy in France is a matter of detail which falls outside of the scope of this book. National, regional, and local administration are dealt with in the works on administrative law which have already been referred to. Very good discussions may be found in Professor Berthélemy's treatise and Professor Hauriou's *Précis.*

Some reference, however, should be made to the distinguishing features of French administrative law.

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[72] Dalloz. Code administratif. Paris, Dalloz, 1928. 1389 p.

[73] Delpech, J. Code administratif, avec Supplément. Paris, Recueil Sirey, 1928. 932 p. Supplément, 61 p.

[73a] Notes d'arrêts sur décisions du Conseil d'État et du Tribunal des Conflits publiés au "Recueil Sirey" de 1892 à 1928 et classés par A. Hauriou. Paris, Sirey, 1929. 3 v.

Tribunals

Unlike the practice of Anglo-American jurisdictions of submitting controversies arising out of the operation of the public service to the ordinary courts, in France, suits of this kind when against the Government, are usually within the jurisdiction of separate administrative tribunals, whose personnel is drawn from the administrative organization. In view of this fact, it may seem to an Anglo-Saxon something of a paradox to say that the individual is probably better protected against the arbitrary acts of administrative officials than in any other country. That the latter is true is largely due to the fact that the administrative tribunals have been able to build up a body of case law providing for new remedies for the protection of private individuals with a degree of skill and ingenuity which have drawn the admiration even of such a redoubtable critic of the French system as Professor Dicey. Indeed, it is surprising to find in France, where so much of the law is codified, that administrative law is almost entirely the result of judicial decision. Leaving aside certain special courts, the administrative tribunals are the prefectoral councils (*Conseils de préfecture*), the Council of State (*Conseil d'État*) and the Tribunal of Conflicts (*Tribunal des Conflits*).

French administrative courts, with particular reference to the Council of State and the Tribunal of Conflicts, were described by Professor Duguit in an article appearing in the Political Science Quarterly (v. 29, p. 385). According to Professor Duguit the body of case law worked out by the Council deals with three principal topics: Acts *ultra vires* (*excès de pouvoir*); misapplication of power (*détournement de pouvoir*) and the liability of the administration to individuals. Under the first heading the Council annuls such acts done under administrative authority as are in excess of power. The only departments of the Government which are exempt are the legislative and judicial. Even the President is subject to the control of the Council in so far as administrative acts are concerned. Such acts, however, as concern the relation of the President to Parliament under the Constitution or are performed in his diplomatic capacity are without its jurisdiction. Under the second heading, it annuls acts which arise out of misuse of power

(*détournement de pouvoir*). Misapplication of power is present in cases where administrative acts, while not contravening any express legal provision, are performed by administrative officials for a purpose other than that which the law had in view when it conferred authority. It is in the last field (governmental responsibility) that the jurisdiction of the administrative courts has received its greatest extension within the last few years (*infra*).

The Tribunal of Conflicts has jurisdiction of controversies arising out of conflicts between judicial and administrative claims to jurisdiction.

Another article dealing with court control of administrative acts but not specially with organization of administrative courts is *Judicial control of administrative and legislative acts* by Professor Garner, in the American Political Science Review (v. 9, p. 637).

There are several French works dealing especially with the organization, jurisdiction, and powers of administrative courts. Though old, the *Traité de la juridiction administrative*[74] by Laferrière, formerly vice president of the Council of State, is still an extremely valuable text. Long the classic on judicial control, it is extensively employed in administrative circles. Two recent works may be used to supplement, if not to replace Laferrière's treatise. While not as broad in its scope, *Le contrôle juridictionnel*[75] by Raphael Alibert, professor at the Paris School of Political Sciences, has the reputation of containing an excellent account of jurisdiction and procedure with respect to *ultra vires* acts. Professor Appleton, of the University of Lyon, in his *Contentieux administratif*[76] gives an extremely valuable short account of jurisdiction, organization, and procedure in administrative courts. In the words of the author, the work is intended to be something more than a manual, but something less than an encyclopedia. Both works give a

[74] Laferrière, E. Traité de la juridiction administrative et des recours contentieux. 2. éd. Paris, Berger-Levrault, 1896. 2 v.

[75] Alibert, R. Le contrôle juridictionnel de l'administration au moyen de recours pour excès de pouvoir. Paris, Payot, 1926. 391 p.

[76] Appleton, J. Traité élémentaire du contentieux administratif; compétence, juridictions, recours. Paris, Dalloz. 1927. 681 p.

comprehensive survey of the cases in which the administrative courts will and will not give relief.

RESPONSIBILITY OF THE STATE FOR TORTS

Returning to the three types of cases in which the jurisprudence of the Council of State has been developed within recent years, the last, state responsibility, should be the most interesting to the student of French public law whose concern is primarily comparative. It is here that French law and jurisprudence have produced doctrines which should be applicable regardless of internal local administrative organization. The very fact that the modern French theory has been so largely developed by the Council of State on its own initiative without extensive intervention of positive law is not only a refutation of criticisms of the French system, like that of Dicey, who expressed the opinion that an administrative court drawn from the administrative class would favor the administration, but affords an interesting basis of comparison with the Supreme Court of the United States whose independent position has enabled it to develop doctrines which are of social and political as well as judicial significance.

One may get the impression from general reading that the French administrative courts tend to protect unduly the official class by shifting the burden of responsibility from the shoulders of the official to the State. This seems to be partially responsible for Professor Walton's criticism of French rules of responsibility. (*French administrative courts and modern French law as to the responsibility of the state*, 13 Ill. Law Review 204.) French law with respect to the responsibility of master and servant is, in the main, similar to that under the common law, both master and servant being responsible if the servant is guilty of fault when acting in the scope of the master's business. (If anything, the responsibility of the master is more extensive under French law.) This rule has not, however, been carried over into the field of administrative law, with the result that if the case is one for governmental responsibility, aris-

Personal and Official Fault.

Personal Responsibility

ing out of official fault, the state or one of its subdivisions is alone responsible, the rule being one of non-cumulation of liability. Where the official has acted on his personal account, the traditional doctrine has been that he alone is responsible for his fault and may be sued in a civil court. Whether the official is responsible or not depends on whether he was acting officially or in his personal capacity, a troublesome question. Indeed, the difference between personal and official fault is one of the most difficult subjects in French administrative law. Beginning with Laferrière every writer on administrative law has attempted to fix precisely the respective limits of each. The matter has also been dealt with from the point of view of the civil responsibility of the public servant in a number of theses, of which the more recent are Depaule's *Responsabilité des fonctionnaires*,[77] Nézard's *Théorie juridique de la fonction publique*,[78] Bernard's *De la responsabilité des fonctionnaires*,[79] Nesmes-Desmarets' *De la responsabilité des fonctionnaires*,[80] Berteaud's *La responsabilité personnelle des fonctionnaires*,[81] Cot's *La responsabilité civile*,[82] and Dupeyroux's *Faute personnelle et faute du service public*.[83] A short but valuable discussion may also be found in the third volume (p. 269 *et seq.*) of Professor Duguit's treatise on constitutional law, in which the learned writer gives the views of various writers as well as his own.

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[77] Depaule, J. Étude historique sur la responsabilité des fonctionnaires publics en droit français depuis 1789. Carcassonne, A. Gabelle, 1902. 238 p.

[78] Nézard, H. Théorie juridique de la fonction publique. Paris, Larose, 1901. 2 p. l., 770 p.

[79] Bernard, E. De la responsabilité personnelle des fonctionnaires administratifs dans leurs rapports avec les particuliers. Bordeaux, 1909. 214 p.

[80] Nesmes-Desmarets, R. de. De la responsabilité des fonctionnaires de l'ordre administratif et judiciaire envers les particuliers. Paris, Giard et Brière, 1910. 352 p.

[81] Berteaud, C. De la responsabilité personnelle des fonctionnaires administratifs envers les particuliers. Bordeaux, 1922. 158 p.

[82] Cot, P. La responsabilité civile des fonctionnaires publics. Paris, Pichon, 1922. 334 p.

[83] Dupeyroux, H. Faute personnelle et faute du service public. Paris, Rousseau, 1923. 294 p.

Coexistence of Civil and Administrative Responsibility

Mention should be made of recent extension of the scope of state responsibility so as to impose responsibility on the state where there is personal fault. In an article appearing in the *Revue du droit public* in 1914 (p. 572) Professor Jèze, after raising the question of the propriety of the traditional doctrine that the state is not responsible when the damage arises out of personal fault, expressed the hope that the Council of State would extend administrative liability so as to include responsibility where the governmental agent acts on personal account. Subsequently, in the Lemonnier case, decided in 1918 (S. 18–19. 3, 41; also (1918) Lebon, 772), the Council of State seems to have followed the suggestion of Professor Jèze in applying the doctrine of administrative responsibility when it had already been held in a civil court, in a case arising out of the same facts, that an official was guilty of personal fault and therefore responsible. The case has been commented on, notably by Professor Jèze in the *Revue du droit public* in 1918 (p. 42) and Professor Fliniaux of Toulouse in the same review in 1921 (p. 333). It is interesting to note, however, that neither Professors Duguit nor Hauriou find that it necessarily detracts in any way from the traditional doctrine, in that, under their view, the decision (arising out of responsibility for a wound received from a shot fired at a public shooting gallery erected at a public fête) merely recognizes responsibility for two faults, that of the official and that of the administration, the latter being not the fault of the official but the fault of the administration in not adequately providing for the proper functioning of the public service. This ingenious explanation of Professor Duguit is supported by reference to other cases and appears at page 478 and following, of the third volume of his treatise on constitutional law. Some discussion and the doctrine of the question of the coexistence of civil and administrative responsibility of the governmental agent and the Government may also be found in the theses of Berteaud, Cot, and Dupeyroux already referred to.

That the State should be under a duty to fulfil its contracts would hardly be controverted to-day. Whether it should be responsible for torts committed by officers is a matter on which opinions differ. Anglo-American law, on the one

hand—up to the present—and French and German law, on the other hand, adopt different points of view. Non-responsibility of the State for the acts of its judicial agents seems to be the rule in France as well as in common-law jurisdictions but it should be recalled that provision is made for compensation to an accused who has been wrongfully convicted in a criminal trial. Again, the State is under no legal duty to make compensation for injury caused by legislative enactments. There is here, however, a strong doctrinal opinion in favor of compensation. In addition to the discussion to be found in the works on administrative law and state responsibility, the latter subject has been dealt with in a number of theses of which the more recent are those of Arlet,[84] Brulle,[85] Despax,[86] Giraud,[87] and Le Roux.[88]

Administrative Responsibility

It is in the field of administrative responsibility for torts that the modern French doctrine has been developed. Originally in France, as elsewhere, the underlying theory was that "the king can do no wrong." Subsequently even with sovereignty shifting from a prince to the people there was at first no thought of state liability. But during the course of the last century a number of civilists took the position that the State could be assimilated to an ordinary corporate master with a resulting application of the provisions of the Code (arts. 1382 and 1384). The idea was acceptable to the Court of Cassation, but in the meanwhile the Council of State was developing a doctrine to the effect that state responsibility is independent of the provisions of the Code, falling within the scope of public law. The conflict was decided by the Tribunal of Conflicts in favor of the Council of State with the result that administrative courts alone have

[84] Arlet, L. De la responsabilité de l'état législateur. Sarlat, Michelet, 1914. 179 p.

[85] Brulle, R. De la responsabilité de l'État à raison des actes législatifs. Bordeaux, Y. Cadoret, 1914. 106 p.

[86] Despax, R. De la responsabilité de l'État en matière d'actes législatifs et réglementaires. Paris, Giard et Brière, 1909. 146 p.

[87] Giraud, E. De la responsabilité de l'État à raison des dommages naissant de la loi. Paris, Giard & Brière, 1917. 360 p.

[88] Le Roux, P. Essai sur la notion de la responsabilité de l'État considéré comme puissance publique et notamment dans l'éxercise du pouvoir législatif. Paris, Pichon et Durand-Auzias, 1909. 120 p.

jurisdiction and state responsibility is independent of the civil law. (The ordinary courts were left with jurisdiction only when the State acts in *gestion privée*, as a private corporation might. They also have jurisdiction of suits against officials guilty of personal fault.) Subsequently, after 1908, the administrative doctrines were applied to the responsibility of subdivisions of the State and local governmental bodies.

The evolution of administrative theories of responsibility, based on public law conceptions, need not be discussed here. Accounts may be found in an article by Professor Borchard (28 Columbia Law Review 737) and in chapter 10 of Watkins' *The State as a party litigant.*[89] An interesting phase of the evolution has been the diminishing importance of the distinction formerly made between "governmental" acts (*puissance publique*) and acts arising out of the public service (*de gestion*), with a corresponding extension of state responsibility in France, further than in any other country.

Governmental responsibility has been the subject of an extensive literature. The fundamental works include the texts on administrative law by Professors Berthélemy and Hauriou, already referred to, and the third volume of Professor Duguit's treatise on constitutional law. Professor Duguit gives a valuable bibliography not only of the principal texts but also of articles pertaining to various problems arising out of state responsibility which have appeared from time to time in the *Revue du droit public.* Valuable discussions may also be found in Professor Jèze's *Principes généraux*, in Laferrière's *Juridiction administrative* and in Professor Appleton's *Contentieux administratif*, all of which have been mentioned. The last gives extensive references to the decisions of the Council of State.

Of the works devoted solely to state responsibility the most important are Teissier's *La responsabilité de l'État*,[90] which is a reprint of an essay contained in the *Répertoire de droit administratif*, and a recent text by Professor Duez, La

[89] Watkins, R. D. The State as a party litigant. Baltimore, Johns Hopkins press, 1927. 212 p.

[90] Teissier, G. La responsabilité de la puissance publique. Paris, Dupont, 1906. 301 p.

responsabilité de la puissance publique.[91] Masteau's recent *La responsabilité de l'État*[92] also deserves mention. On the theory of responsibility, Marcq's *La responsabilité de l'État*[93] merits an important place. A large number of theses are cited by Professor Duguit at page 477 of the third volume of his treatise on constitutional law. It is interesting to note that in his reference to the two outstanding Belgian works by Bourquin[94] and Wodon,[95] Professor Duguit calls attention to the fact that the accepted French doctrines have not yet been developed in Belgium.

Contracts

The various sources which have just been referred to are devoted primarily to the noncontractual responsibility of the State. There is but little material on contractual responsibility. Although now somewhat old, an important work is Perriquet's *Les contrats de l'État.*[96] Some discussion of state debts and contracts may also be found in volume three of Professor Duguit's treatise on constitutional law. In addition, reference should be made to a recent work by Professor Jèze.[97]

SOVEREIGNTY—THE PERSONALITY OF THE STATE

In the introduction to his recent work on governmental responsibility, Professor Duez, after stating that the

[91] Duez, P. La responsabilité de la puissance publique (en dehors du contrat). Paris, Dalloz, 1927. 210 p.

[92] Masteau, J. La responsabilité de l'État. Paris, Recueil Sirey, 1927. 282 p.

[93] Marcq, R. La responsabilité de la puissance publique. Bruxelles, Larcier; Paris, Larose et Tenin, 1911. 443 p.

[94] Bourquin, M. La protection des droits individuels contre les abus de pouvoir de l'autorité administrative en Belgique. Bruxelles, Bruylant, 1912. 398 p.

[95] Wodon, L. Le contrôle juridictionnel de l'administration et la responsabilité des services publics en Belgique. Paris, Rivière; Bruxelles, Lamertin, 1920. 270 p.

[96] Perriquet, E. Les contrats de l'État et travaux publics. Tome 1, Contrats de l'État. 2. éd. Paris, Marchal et Billard, 1890. 3 p. l., [v]–xii, 692, 153 p.

[97] Jèze, G. Les contrats administratifs de l'État, des dêpartements, des communes et des etablissements publics. Paris, Giard, 1927. 256 p.

modern French theory of state liability is the "daughter of the triumph of the interventionist doctrine," takes the position that it is not only incompatible with imperialistic and metaphysical notions of the State as conceived by the French revolutionary movement of the end of the eighteenth century, but fits in perfectly with the realistic conception of the State as a vast enterprise set up to satisfy certain general needs. At the head of this enterprise are those who govern and their agents. The former are the directive forces and the latter assure the daily functioning of the details of the public services created to satisfy these general needs. The learned writer thus connects state liability with political philosophy.

One would naturally expect a country like France which has gone through so many political upheavals during the past century and a half to supply various and conflicting theories of the nature of the State. It is not surprising therefore to find present-day writers on public law in the country of Bossuet, Montesquieu, Rousseau, Constant, and Auguste Comte devoting considerable attention to the nature of the State, its personality, sovereignty, and the theory of separation of powers. As already indicated the opposing views on governmental theories are best presented in the works of Professors Duguit and Esmein and Nézard. A complete picture of Professor Duguit's views can best be obtained from his works as a whole, but they are also exposed in his treatise on constitutional law, the first three volumes of which are based on his earlier works, already referred to. First developed in his *l'État, le droit objectif et la loi positive* in 1901, his views on personality and state sovereignty might be summed up in the following quotation from the introduction to his book, *Les transformations du droit public*, with which he concludes his article on the *Law and the State* in 31 Harvard Law Review:

> The will of those who govern has no force as such; it has value and force only to the extent that it makes for the organization and the functioning of a public service. Thus, the notion of public service comes to replace that of sovereignty. The State is no longer a sovereign power which commands; it is a group of individuals having in their control forces which they must employ to create and manage public service. The notion of public service becomes, therefore, the fundamental notion of modern public law.

Professor Duguit also discusses his concept of public service in an article in the Yale Law Journal (v. 32, p. 425).

It would, of course, be a gross exaggeration to pretend that Professor Duguit's sociological solidarist doctrines represent the predominant note in French thought in public law. The classical view is that expressed in the opening phrases of the *Éléments de droit constitutionnel* of Professors Esmein and Nézard:

> The state is the juristic personification of the nation; it is the source of public authority. That which constitutes a nation is the existence of an authority superior to individual wills.

In addition to the discussion in works on public law in general and in those on constitutional law, the theory of the state received extensive discussion by Professor Carré de Malberg, of the University of Strasbourg, in his *Contribution à la théorie générale de l'État.*[98] State personality and sovereignty are also dealt with in the outstanding French work on legal personality, *La personnalité morale,*[99] by Professor Michoud, of the Law faculty of the University of Grenoble, which was recently revised by Dr. Trotobas. It should be recalled that the important works on legal personality were discussed in the chapter on civil law. Mention of the fact that the theory of the State is also discussed in a recent work by Combothecra has already been made.[99a]

EMINENT DOMAIN—PUBLIC WORKS

Eminent domain (*expropriation*) is governed by an act of May 3, 1841, as amended, principally in 1918 and 1921. Its history is dealt with in Des Cilleuls' *Origines et développement du régime des travaux publics.*[1] Under the *ancien régime* the process was virtual confiscation followed by a

[98] Carré de Malberg, R. Contribution à la théorie générale de l'État, spécialement d'après les données fournies par le droit constitutionnel français. Reprint. Paris, Recueil Sirey, 1920–22. 2 v.

[99] Michoud, L. La théorie de la personnalité morale et son application au droit français. 2. éd. Paris, Librairie générale de droit et de jurisprudence, 1924. 2 v. *See* Civil code, page 86.

[99a] *See* page 205, note 42.

[1] Des Cilleuls, A. Origines et développement du régime des travaux publics en France. Paris, Imprimerie nationale; Pichon, 1895. 305 p.

problematical indemnity. As early as 1791 the modern principle that private property may only be taken for a public use under compensation was incorporated in the Constitution of September 3 of that year. It was subsequently reproduced in the Civil code (art. 545). But the modern system of indemnity was not in reality established until the enactment of a law of July 7, 1833, which has since been replaced by the legislation already mentioned.

Procedure or condemnation proceedings aside, the principal questions arising with respect to the exercise of the power of eminent domain in France are three: Who may exercise the power; what may be taken; and for what purposes may it be exercised. Those who may exercise the power are essentially of the same classes as those who may exercise it in the United States. On principle, it can not be exercised in behalf of private enterprises, whatever their importance or purpose. There are, however, two important exceptions, namely, taking property for the use of canals and railways destined for the exploitation of mines and the taking of land necessary for the exploitation of water power under state concession. The property which may be taken, seemingly, includes only corporeal immovables. Movables may only be requisitioned for military purposes. The purposes for which the power may be exercised can not be summed up in a sentence. They are often enumerated in positive legislative enactments. On principle, the administrative authorities may declare a particular purpose to be public. While their finding as to the utility of the exercise of the power may be final, the question as to whether its exercise is for an authorized purpose is subject to administrative review on a contention that the administrative finding is either in violation of positive law or is a misuse of administrative power. Condemnation proceedings, however, are judicial.

The substantive law and procedure with respect to eminent domain are summarized in the treatises on administrative law by Professors Hauriou and Berthélemy. The general subject also received attention from Professor Duguit in the third volume of his work on constitutional law. In addition, valuable essays are contained in Bequet's *Réper-*

toire administrative and the encyclopedias published by Dalloz and Sirey. Most of the works dealing separately with the subject are old. The more important of these are Crépon's *Code annoté*,[2] published in a second edition in 1899 and annotated to the law of 1841 and legislation down to 1899; and *Traité de l'expropriation*[3] by Delalleau, Jousselin, and Perin. The works of Bauny de Récy[4] and Daffry de la Monnoye,[5] though often referred to are too old to be of practical value. The latest texts devoted to eminent domain alone seem to be a small encyclopedia published by the *Recueil Sirey*[6] and a recent work by P. Couzinet.[7]

Attention should be called to the fact that expropriation is usually discussed in connection with public works (*travaux publics*), a term applied to construction executed by the State, or by an administrative body, for a public purpose.

RAILROADS—TRANSPORTATION

An excellent discussion of the relation of the State to railways in France may be found in Professor Berthélemy's treatise (p. 755). The French system is in a sense a combination of or compromise between private and public ownership, the historical background of which is too complicated to set forth here. The principal general works on railways are Picard's *Traité des chemins de fer*,[8] and a

[2] Crépon, T. Code annoté de l'expropriation pour cause d'utilité publique. 2. éd. Paris, Chevalier-Marescq; Plon, 1899. 230 p.

[3] Delalleau et Jousselin. Traité de l'expropriation pour cause d'utilité publique. 8. éd. par Perin. Paris, Marchal et Billard, 1892–93. 2 v.

[4] Bauny de Récy, R. Théorie de l'expropriation pour cause d'utilité publique. Paris, Durand et Pedone-Lauriel, 1871. 251 p.

[5] Daffry de la Monnoye, L. Théorie et pratique de l'expropriation pour cause d'utilité publique. 2. éd. Paris, Pedone-Lauriel, 1879. 2 v.

[6] Carpentier, E. Petit répertoire de l'expropriation pour cause d'utilité publique. Paris, Recueil Sirey, 1927. 203 p.

[7] Couzinet, P. La réparation des atteintes portées à la propriété privée immobilière par les groupements administratifs. Paris, Sirey, 1928. 340 p.

[8] Picard, A. Traité des chemins de fer; économie politique, commerce, finances, administration, droit. Études comparées sur les chemins de fer étrangers. Paris, Rotschild, 1887. 4 v. Index général. Paris, Rotschild, 1887. 98 p.

similar and somewhat later treatise by Carpentier and Maury.[9] Both works, however, because of their age fail to take into account important latter-day legislation, which seems to be best summarized by Professor Berthélemy, who also gives a summary account of the regulations concerning maritime and river transportation, aeronautics, and the postal service. Professor Berthélemy also devotes some space to roads (*voirie*) with short bibliographic references (p. 513 *et seq.*).

PUBLIC EDUCATION

Valuable summaries of such subjects as education, public hygiene, pensions, and public aid to the indigent appear in Professor Berthélemy's treatise.

The discussion under the first heading includes the administrative organization of education, compulsory school attendance, and the legal organization of primary, secondary, and university instruction. The legislation with respect to public and private instruction was also dealt with in Gobron's *Législation et jurisprudence de l'enseignement*,[10] published in a third edition in 1911. In addition, the history of the relation between the state and education, as well as its present regulation, is discussed by Professor Duguit in the fifth volume of his treatise.

Health and safety regulations of industries and buildings are dealt with in the *Traité général* [11] by L. and A. Magistry. Some discussion of public hygiene, pensions, and aid to the indigent may also be found in Professor Hauriou's *Précis*. Both Professors Berthélemy and Hauriou give short bibliographies.

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[9] Carpentier, A., et Maury, G. Traité pratique des chemins de fer. Paris, Larose et Tenin, 1894. 3 v. Supplément. 1913. 314 p. The four volumes are reprints from the Répertoire général du droit français.

[10] Gobron, L. Législation et jurisprudence de l'enseignement public et de l'enseignement privé en France et en Algérie. 3. éd. Paris, Larose & Tenin, 1911. 612 p.

[11] Magistry, L. et A. Traité général sur l'application de la nouvelle législation des établissements classés. Paris, Godde, 1923. 712 p.

CHURCH AND STATE

Religious liberty and the relation of the church to the state receive treatment in the various texts on administrative and constitutional law. An extensive discussion may be found in the fifth volume of Professor Duguit's treatise on constitutional law. Among the other works which may be consulted with profit are Professor Esmein's treatise on constitutional law and the texts on administrative law by Professors Berthélemy and Hauriou, as well as the latter's *Principes de droit public.* Professor Hauriou[12] was also the author of a separate publication, which was published in 1906 as a reprint of a part of an earlier edition of his work on administrative law. The literature on the relation of the church to the state is exceedingly abundant, but most of it is written from an individualist biased point of view, particularly with respect to the legislation of 1905 and 1907 providing for the separation of church and state. For that reason it is extremely difficult to estimate its value.

A good, comparatively recent work giving the practical effect of the legislation of 1905 and 1907 is Bureau's *Quinze années de séparation.*[13] Other works include Abbé Crouzil's *Traité de la police du culte,*[14] De Mouy's *Nouvelle législation des cultes*[15] covering the legislation of 1905 and 1907, *Le régime des cultes*[16] by Réville and Armbruster and *La séparation*[17] by De Lamarzelle and Taudière. In addition,

[12] Hauriou, M. Principes de la loi du 9 décembre 1905, sur la séparation des églises et de l'État. Paris, Larose et Tenin, 1906. 80 p. (Extr. du Précis de Droit administratif.)

[13] Bureau, P. Quinze années de séparation. Étude sociale documentaire sur la loi du 9 décembre 1905. Paris, Bloud et Gay, 1921. 248 p.

[14] Crouzil, L. Traité de la police du culte sous le régime de la séparation. Paris, Bloud, 1908.

[15] Mouy, R. de. Nouvelle législation des cultes. 1905–1908. Paris, Dupont, 1908. 2 p. l., 360 p.

[16] Réville, M., et Armbruster, L. Le régime des cultes. Paris, Berger-Levrault, 1906. 324 p.

[17] Lamarzelle, G. de et Taudière, H. La séparation de l'église et de l'État. Paris, Plon-Nourrit, 1906. 462 p.

there is a three-volume work by Maurice Félix dealing with the history and legal position of religious congregations.[17a] An extensive bibliography may be found in Professor Duguit's treatise on constitutional law. A good but not unbiased analysis of the acts of 1905 and 1907 was published in the Political Science Quarterly for 1908 (v. 28, p. 259) by Professor Guerlac under the title, *Separation of church and State in France.*

Prior to 1905 the relations between church and State were regulated by a law of April 8, 1802, enacted after the conclusion of a treaty between the First Consul and Pope Pius VII designated as the *Concordat.* Under this law and later decrees, provision was made for the practice under state supervision of three different religions, the Roman Catholic, the Protestant (comprising Calvinists and Lutherans), and the Jewish. One of the important provisions of this act was that the clergy acquired the standing of governmental officials with regular salaries paid by the State. In return the Church was under the supervision of the Government, which appointed the bishops and archbishops of the Roman church with the sanction of the Pope. While the priests were appointed by the bishops and archbishops, appointments could only be made after consultation with the Government.

The act of 1905 providing for separation was enacted after 30 years of acrimonious debate. The provisions of the new law, while ostensibly looking to freedom of religious worship and complete separation of the internal government of religious bodies from the supervision of the State, also brought religious bodies within partial supervision through the requirement that religious associations comply with state organization laws. Although accepted by both Protestant churches and the Jewish faith, the régime provided for was rejected by the Catholic hierarchy. Accordingly, the Catholic Church is governed by an act of 1907 which withdrew most of the privileges still conferred by the law of 1905 and brought the church under the regulations of the law of associations of 1901 and that of 1881 relating to public meetings. It should be remarked here that Alsace and Lorraine have not yet been brought within the legislation of 1905 and 1907.

[17a] Félix, M. Congrégations religieuses. Paris, Rousseau, 1908–29. 3 v.

INDIVIDUAL RIGHTS—FREEDOM OF SPEECH

Writers on constitutional law usually consecrate a part of their works to individual rights—similar to those which are included under the American bills of rights. Some of these, such as religious freedom and education, have just been referred to. Others include such privileges as that of engaging in a lawful calling, liberty of contract, freedom of reunion and association, and freedom of speech. Unlike the earlier French constitutions, the present fundamental laws contain none of the dogmatic expressions which usually appear in written constitutions, with the result that these rights are wholly governed by statute. Valuable theoretical and practical discussions of these different "liberties" appear in the fifth volume of Professor Duguit's treatise, and some discussion may be found in the second volume of Professor Esmein's text. Professor Duguit, in his fifth volume, also devotes some attention to the prohibition and regulation of certain callings, industries, and commercial ventures. Reference should also be made to his *Souveraineté et liberté*,[18] published in 1922 and consisting of lectures delivered at Columbia University in 1919.

Freedom of reunion, association, and speech has passed through varying fortunes during the almost a century and a half since the first Revolution. Freedom of speech was first guaranteed in the Constitution of 1791 as one of the natural rights of man. Since then the position of the press in particular has depended largely upon the liberal or reactionary nature of the government in power. At present the law regulating the press, which might be called the existing charter of its liberty, is that of 1881. Although entitled "An act concerning the freedom of the press," it provides for the regulation of other methods of publicity, such as books and posters. Attention should be called to the fact that publications in foreign languages are subject to special regulations.

Freedom of Speech. The Press

The legal position of the press is discussed in the treatises on administrative law as well as those on constitutional law. In addition, reference may be made to the treatises by

[18] Duguit, L. Souveraineté et liberté. Paris, Alcan, 1922. 208 p.

Fabreguettes[19] and Le Poittevin[20] and Barbier's *Code expliqué de la presse.*[21]

COLONIAL LAW

The administration of the French colonies constitutes a régime separate and distinct from that of France proper. The constitutional laws do not apply to the colonies; a fact also true of legislative enactments which are not expressly made applicable. Executive authority is greater than in the mother country, and the colonies are in the main governed by a distinct body or bodies of law.

The best work on colonial law is that of Arthur Girault, *Principes de colonisation et de législation.*[22] Four volumes of a fifth edition have been published. These comprise the first, second, fourth, and fifth volumes dealing with French colonial history, administration and French northern Africa. Economic questions will be dealt with in the third volume, said to be in the course of preparation. A much shorter work is Merignhac's *Traité.*[23] Reference is also sometimes made to Dislère's *Traité de législation coloniale,*[24] published in a 4th edition in 1914. In addition, attention should be called to the 3-volume treatise on Algerian legislation by Larcher and Rectenwald.[25] Mention should be made of the fact that Algiers occupies a position apart. At one time the tendency was to treat it as a part of France proper, while at present the tendency seems to be to assimilate it to the colonies.

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[19] Fabreguettes, P. Traité des délits politiques et des infractions par la parole, l'écriture et la presse. 2. éd. Paris, Chevalier-Marescq; Plon, 1901. 2 v.

[20] Le Poittevin, G. Traité de la presse. Paris, Larose, 1902–04. 3 v.

[21] Barbier, G. Code expliqué de la presse; traité général de la police, de la presse et des délits de publication. 2. éd. Paris, Marchal et Godde, 1911. 2 v.

[22] Girault, A. Principes de colonisation et de législation coloniale. 5. éd. Paris, Recueil Sirey, 1927–29. 4 v.

[23] Merignhac, A. Traité de législation et d'économie coloniales. 2. éd. Paris, Recueil Sirey, 1925. 887 p.

[24] Dislère, P., et Duchêne, M. Traité de législation coloniale. 4. éd. Paris, Dupont, 1914. 2 v.

[25] Larcher, E., et Rectenwald, G. Traité élémentaire de législation algérienne. 3. éd. Paris, Rousseau, 1923. 3 v.

There is also a special compilation of Moroccan laws and codes.[26]

ALSACE AND LORRAINE

While Alsace and Lorraine were returned to France as the result of the armistice and the treaty of Versailles, their complete reintegration has not yet taken place. Within the last few years, however, there has been a more rapid assimilation than during those immediately following their cession. The present administrative organization is dealt with summarily in Professor Hauriou's treatise. Due to their peculiar relation to France the legislation and jurisprudence of both provinces have been the subject of a special encyclopedia [27] published under the direction of Professor de Niboyet, of the University of Strasbourg.

PUBLIC FINANCE—FISCAL LEGISLATION

Due to the fact that public finance and fiscal legislation constitute a part of the law school curriculum as provided for in the decree of August 2, 1922, members of French law faculties have produced several general works, giving a comprehensive survey of the subject, which do not have their counterpart in our legal literature. The most important are those of Professors Allix and Jèze, the outstanding authorities in their field and both of the Paris Law School. Professor Jèze is the author of a number of texts published during the past several years under the title *Cours de science des finances*.[28] Less theoretical, the *Traité élémentaire*,[29] by

[26] Rivière, P. L. Traités, codes et lois du Maroc. Paris, Recueil Sirey, 1924–25. 4 v. Suppléments 1926, 1927, 1928, 1929.

[27] Niboyet, J. P. Répertoire pratique de droit et de jurisprudence d'Alsace et de Lorraine. Paris, Recueil Sirey, 1925. 2 v. Suppléments. 1925, 1926, 1927, and 1928.

[28] Prof. G. Jèze's publications under the title Cours de science des finances, based on his lectures and all published by Giard, include: Dépenses publiques. Théorie générale du crédit public. 6. éd. 1922. 507 p. Théorie générale du budget. 1922. 286 p. Théorie générale de l'emprunt, 1923. 256 p. La technique du crédit public. 6. éd. 1923. 224 p. La technique du crédit public. Taux de l'intérêt . . . 6. éd. 1925. 452 p. Another series under the title Cours de finances publiques comprises: La technique du crédit public. L'immunité fiscale de la dette publique . . . 1923. 224 p. La technique du crédit public. Le remboursement de la dette publique, 1925. 312 p.

Professor Allix, gives in one volume a comprehensive outline of public finance in France. The first part of Professor Allix's work is devoted to a discussion of the preparation, adoption, and execution of the budget, the second to resources of the State, including taxes and loans, and the third to local budgets and taxes. A fourth part deals with colonial budgets and taxation, and a fifth gives a summary notion of the fiscal legislation of Germany, England, and Italy. Other texts of value but less important, include Professor Moreau's *Manuel élémentaire*,[30] Professor Moye's *Précis élémentaire*,[31] and Arthur Girault's *Manuel*.[32] Attention should be called to the fact that Professor Allix's treatise was published in a fifth edition in 1927 and thus takes into account taxation imposed as the result of the more recent financial reforms, a matter which is not always dealt with in some of the other works mentioned.

Budget

In France both the Government and Parliament participate in the preparation of the budget. Each ministry prepares a budget of expenses which is transmitted to the Ministry of Finance for coordination. The latter alone of the ministries prepares the budget of receipts. After the complete preparation of the budget by the Ministry of Finance, it is submitted to Parliament, where it is first sent to a committee on finance (in both houses) for a study of its details. There it is subject to modification and even revision before being submitted to the legislature for adoption. The outstanding general work on the budget is Pro-

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La date de remboursement de la dette publique. Histoire de l'amortissement en France, 1926. 384 p. La date de remboursement de la dette publique. Histoire de l'amortissement en Angleterre, 1927. 261 p.

[29] Allix, E. Traité élémentaire de science des finances et de législation financière française. 5. éd. Paris, Rousseau, 1927. 1,063 p.

[30] Moreau, F. Manuel élémentaire de législation et science financières. Paris, de Boccard, 1924. 640 p.

[31] Moye, M. Précis élémentaire de législation financière, à l'usage des étudiants des Facultés de droit. 8. éd. Paris, Recueil Sirey, 1926. 442 p.

[32] Girault, A. Manuel de législation financière. Paris, Recueil Sirey, 1924–27. 3 parts.

fessor Stourm's *Le budget*,[33] translated into English in 1917.[34]

The rôle played by Parliament in the adoption of the budget is also discussed by Professor Duguit in the fourth volume of his treatise, as well as in the general treatises on public finance and fiscal legislation.

Direct Taxation

The present system of direct taxation in France is of comparatively recent date, having its origin in the fiscal reforms which took place between 1914 and 1917 and which were in turn largely based on the proposals made in 1907 by Caillaux, former Minister of Finance. Having as their basis tax on income, direct taxes are of two species—taxes on income from different categories of sources (*impôt cédulaire*) and a complementary tax on total income (*impôt général*). The first is divided into eight categories, comprising generally two categories of income from land, income from stocks and bonds and capital, income from loans, industrial and commercial profits, profits from agricultural ventures, salaries, and income from non-commercial professions. The methods of evaluating income and collecting the different taxes are outlined in the *Traité élémentaire* by Professor Allix and several texts devoted specially to direct taxation.

General summary information concerning direct taxation is contained in a manual, *Notions sommaires des impôts*,[35] published by the Ministry of Finance. This work is of particular value. The leading treatise is *L'impôt sur le revenu*,[36] published by Professor Allix with the collaboration of Dr. Lecerclé. Another important and comprehensive work is Bocquet's *L'impôt sur le revenu*.[37] A

[33] Stourm, R. Cours de finances. Le budget. 7. éd. Paris, Alcan, 1913. 621 p.

[34] Stourm, R. The budget, by René Stourm . . . a translation from the 7th ed., by Thaddeus Plazinski. New York, Appleton and company, 1917. 619 p.

[35] Notions sommaires relatives à l'assiette et l'établissement des impôts sur les revenus. Ministère des finances. Paris, Imprimerie nationale, 1926. 64 p.

[36] Allix, E. et Lecerclé, M. L'impôt sur le revenu, impôts cédulaires et impôt général. Paris, Rousseau, 1926. 2 v. Supplément, 1929.

[37] Bocquet, L. L'impôt sur le revenu, cédulaire et général. 3. éd. Paris, Recueil Sirey, 1926. 1111 p. Suppléments, 1927–29. 3 v.

thesis, *Le contrôle en matière de contributions directes*,[38] by Champion is often recommended.

Indirect Taxation

The best work on indirect taxation seems to be that published by Professor Allix and Dr. Lecerclé.[39]

Total Sales Tax

One of the most lucrative and important taxes resulting from the war is the tax on business turnover (*chiffre d'affaires*) which is imposed on total sales and receipts for services rendered. Those who exercise a liberal profession, agriculturalists selling their own products, artists, and agricultural associations, are, however, excepted from its operation. This form of taxation, which was carried in the 1927 budget as probably producing more than seven and a half billion francs, has been the subject of a commentary [40] by Professor Allix and Dr. Lecerclé, published in a second edition in 1929.

Registration

Another important source of revenue is the tax imposed on the registration or recordation of written instruments (*enregistrement*). The best recent work [41] is the treatise by Dublineau, which has been brought down to August 1, 1927, through the publication of supplements. In this connection mention should be made of a practical treatise on registration and stamp taxes [42] by Vincent, who is also the author of a very good small practical résumé of the fiscal régime of associations, stocks and bonds, and insurance.[43] Another valuable work on the fiscal régime of associations is that of Lefebvre,[44] the first volume of which is devoted to registration, and the second to taxation.

Corporations

[38] Champion, R. Le contrôle en matière de contributions directes en France. Paris, Rivière, 1926. 436 p.

[39] Allix, E. et Lecerclé, M. Les contributions indirectes. 3. éd. Paris, Rousseau, 1929. 920 p.

[40] Allix, E., et Lecerclé, M. La taxe sur le chiffre d'affaires. Traité théorique et pratique. 2. éd. Paris, Rousseau, 1929. 536 p. Les impôts français.

[41] Dublineau, E. Traité théorique et pratique de l'enregistrement. 3. éd. Paris, Recueil Sirey, 1924. 1,128 p. Suppléments 1925, 1927.

[42] Vincent, G. Traité technique et pratique des droits d'enregistrement, de timbre et d'hypothèque. Paris, Rivière, 1927. 516 p.

[43] Vincent, G. Le régime fiscal des sociétés, des valeurs mobilières et des assurances. Paris, Juris-classeurs, 1928. 420 p.

[44] Lefebvre, R. et J. Les sociétés françaises. Traité fiscal des sociétés anonymes. Paris, Juris-Classeurs, 1928. 2 v.

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